

# COVID-19 IN ASIA

LAW AND POLICY CONTEXTS

EDITED BY  
VICTOR V. RAMRAJ

OXFORD

# COVID-19 IN ASIA



# COVID-19 IN ASIA

*Law and Policy Contexts*

*Edited by*

VICTOR V. RAMRAJ

**OXFORD**  
UNIVERSITY PRESS

# OXFORD

UNIVERSITY PRESS

Oxford University Press is a department of the University of Oxford. It furthers the University's objective of excellence in research, scholarship, and education by publishing worldwide. Oxford is a registered trade mark of Oxford University Press in the UK and certain other countries.

Published in the United States of America by Oxford University Press  
198 Madison Avenue, New York, NY 10016, United States of America.

© the several contributors 2021

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without the prior permission in writing of Oxford University Press, or as expressly permitted by law, by license, or under terms agreed with the appropriate reproduction rights organization. Inquiries concerning reproduction outside the scope of the above should be sent to the Rights Department, Oxford University Press, at the address above.

You must not circulate this work in any other form  
and you must impose this same condition on any acquirer.

---

#### Library of Congress Cataloging-in-Publication Data

Names: Ramraj, Victor Vridar, 1968– editor.

Title: COVID-19 in Asia : law and policy contexts / edited by Victor V. Ramraj.

Other titles: Coronavirus disease-19 in Asia

Description: New York, NY : Oxford University Press, [2021] | Includes index.

Identifiers: LCCN 2020032558 | ISBN 9780197553831 (hardback) | ISBN 9780197553855 (epub) |

ISBN 9780197553862 (digital-online) | ISBN 9780197553848 (updf)

Subjects: LCSH: Public health laws—Asia. | Communicable diseases—Asia. |

COVID-19 (Disease)—Social aspects—Asia. | Medical policy—Asia.

Classification: LCC KNC684 .C68 2020 | DDC 344.503/21—dc23

LC record available at <https://lcn.loc.gov/2020032558>

---

DOI: 10.1093/oso/9780197553831.001.0001

1 3 5 7 9 8 6 4 2

Printed by Integrated Books International, United States of America

#### Note to Readers

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is based upon sources believed to be accurate and reliable and is intended to be current as of the time it was written. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. Also, to confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate.

*(Based on the Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.)*

**You may order this or any other Oxford University Press publication  
by visiting the Oxford University Press website at [www.oup.com](http://www.oup.com).**

*For Sandy, Eli, and Satchel  
who kept me company  
during the pandemic*



# Contents

<i>Preface</i>	xi
----------------	----

## INTRODUCTION AND BACKGROUND

1. A Short History and Thematic Overview <i>Victor V. Ramraj &amp; Matthew Little</i>	3
--	---

## PART I: FIRST WAVE CONTAINMENT MEASURES

2. China: Community Policing, High-Tech Surveillance, and Authoritarian Durability <i>Feng Xu &amp; Qian Liu</i>	27
3. Taiwan: Democracy, Technology, and Civil Society <i>Wen-Chen Chang &amp; Chun-Yuan Lin</i>	43
4. Vietnam: Marshalling State and Non-State Actors <i>Cuong Nguyen &amp; Thanh Phan</i>	57
5. Spread of Information versus Spread of Virus: China, Taiwan, and Hong Kong <i>Guoguang Wu</i>	73
6. Borders and Entry Controls in Asia <i>Jaclyn L. Neo &amp; Darius Lee</i>	85
7. Central Banks and Their Limits in a Pandemic <i>Christian Hofmann</i>	97

## PART II: EMERGENCY POWERS

8. Governing through Contagion <i>Lynette J. Chua &amp; Jack Jin Gary Lee</i>	115
9. Pandemics and Emergency Powers in Asia <i>Victor V. Ramraj &amp; Arun K. Thiruvengadam</i>	133
10. Japan: Keeping the Death Toll to the Minimum <i>Tomoya Ono &amp; Shigenori Matsui</i>	147



11. Thailand: Emergency Responses or More Social Turbulence? <i>Rawin Leelapatana &amp; Chompunoot Tangthavorn</i>	161
12. India: Federalism, Majoritarian Nationalism, and the Vulnerable and Marginalized <i>Reeta Chowdhari Tremblay &amp; Namitha George</i>	173
PART III: TECHNOLOGY, SCIENCE, AND EXPERTISE	
13. International Health Regulations and Compliance in Asia <i>Susan Breau &amp; Preethi Lolaksha Nagaveni</i>	191
14. Can Technology and Privacy Co-Exist in a Pandemic? <i>Ze Shi Li, Visakha Phusamruat, Tony Clear, &amp; Daniela Damian</i>	207
15. Singapore: Technocracy and Transition <i>Maartje De Visser &amp; Paulin Straughan</i>	221
16. South Korea: Democracy, Innovation, and Surveillance <i>Sunghee Chung &amp; Sujin Lee</i>	239
17. Hong Kong: The Healthcare Professions and the Outbreak <i>Calvin W.L. Ho &amp; Daisy Cheung</i>	251
PART IV: POLITICS, RELIGION, AND GOVERNANCE	
18. Religion amid the Pandemic: A Buddhist Case Study <i>Benjamin Schonthal &amp; Tilak Jayatilake</i>	265
19. Bhutan: The Role of the Constitutional Monarch in a Public Health Crisis <i>Sonam Tshering &amp; Nima Dorji</i>	279
20. Cambodia: Public Health, Economic, and Political Dimensions <i>Ratana Ly, Vandanet Hing, &amp; Kimsan Soy</i>	293
21. Indonesia's Response to the Pandemic: Too Little, Too Late? <i>Nadirsyah Hosen &amp; Nurussyariah Hammado</i>	307
22. Malaysia: Improvised Pandemic Policies and Democratic Regression <i>Azmil Tayeb &amp; Por Heong Hong</i>	321
23. Myanmar: Pandemic in a Time of Transition <i>Kai Ostwald &amp; Tun Myint</i>	335

24. Sri Lanka: Pandemic-Catalyzed Democratic Backsliding 349  
*Bhavani Fonseka, Luwie Ganeshathasan, & Asanga Welikala*

PART V: ECONOMY, CLIMATE,  
 AND SUSTAINABILITY

25. Governments and Business 365  
*Tan Cheng-Han & Jiangyu Wang*
26. Nationalism, Consolidation, and Rationalization in the Aviation Industry 379  
*Jae Woon Lee & Michelle Dy*
27. Asian Trade and Supply Chain Linkages 395  
*Dan Ciuriak & Philip Calvert*
28. Mongolia: After Successful Containment, Challenges Remain 411  
*Charles Krusekopf & Mendee Jargalsaikhan*
29. Reset or Revert in the New Climate Normal 425  
*Navraj Singh Ghaleigh & Louise Burrows*
30. Southeast Asian Workers in a Just-in-Time Pandemic 445  
*Helen Lansdowne & James Lawson*
- Index* 461



# Preface

Within weeks of a report to the World Health Organization (WHO) of “cases of pneumonia [of] unknown etiology (unknown cause)” in Wuhan, China, on 31 December 2019, the disease now known to us as Covid-19 transformed daily life around the world, including the way we collaborate as authors. Some eighteen years earlier, within two months of the 9/11 attacks on New York City and Arlington, Virginia, in 2001, a group of law professors at the University of Toronto were able to gather in person for a conference in Toronto and publish a collection of essays on Canada’s legislative response: *The Security of Freedom*.<sup>1</sup> Although that book project provided the inspiration for this one, by the second half of March 2020, under pandemic conditions, no such gathering was possible. Travel restrictions and entry controls had been swiftly imposed worldwide. Nor was an “instant book” of that nature possible with the working-from-home pressures that publishers had to face. Instead—and against a backdrop of recriminations against “globalization” and multilateral institutions, including the WHO—the sixty-one contributors to this collection, based in seventeen jurisdictions around the world, came together remotely to work on this book.

Our team of authors worked through email exchanges, online workshops, video calls, and a file-sharing platform. Our common purpose has been to capture this epochal moment in a first *scholarly* draft of history, identifying the enduring questions, conundrums, and policy options and challenges arising from the preliminary responses to the pandemic. Wherever possible, chapters were updated to the end of May 2020, our self-imposed cut-off date before we went to press. This is an international and a cross-cultural collaboration, so instead of imposing a particular order to the authors’ names, we have highlighted in bold each author’s surname or formal name according to their naming tradition and preference.

This book would not have found its way to your computer screen or your printed pages were it not for a cascade of advice and support: Bill Harnum pointed me in the right direction in the third week of March, as I was taking some tentative first steps. At the University of Victoria’s Faculty of Law, Dean Susan Breau contributed to the project from her own professional research funds and offered invaluable moral support in addition to contributing a co-authored

<sup>1</sup> Ronald J. Daniels, Patrick Macklem, and Kent Roach eds., *The Security of Freedom: Essays on Canada’s Anti-Terrorism Bill* (Toronto: University of Toronto Press, 2001).

chapter. My colleagues at the Centre for Asia-Pacific Initiatives (CAPI)—in particular, Katie Dey, Robyn Fila, and Jon Woods—provided invaluable advice and support for the virtual chapter-workshops we organized to provide contributors an opportunity to present and receive constructive feedback on their drafts. Some of the chapters were sent out to anonymous reviewers with expertise on specialist topics outside my knowledge as editor; the reviewers provided thoughtful comments on short notice—for which I am immensely grateful.

As the editor of this volume, I am grateful to a remarkable team of contributors who took their mandates seriously, complied with tight deadlines, and worked on their chapters with a genuine *esprit de corps*, mindful of the profound legal and policy questions unleashed by the pandemic—the implications of which will preoccupy students, professors, researchers, policy-makers, health professionals, development workers, and concerned friends and neighbours for years to come. Many of the contributors, and the volume as a whole, benefitted from funding provided by Universities Canada through the Canadian Queen Elizabeth II Diamond Jubilee Scholarships: Advanced Scholars program (QES-AS), as part of a University of Victoria research project, *Regulating Globalization in South and Southeast Asia*, under my direction. I am particularly grateful to Vandamet Hing and the Centre for the Study of Humanitarian Law at the Royal University of Law and Economics, in Phnom Penh, Cambodia, for supporting the book and for assigning some of the QES-AS research funding made available to them to support this book. At the University of Victoria, Jessica Worsley at the Office of Research Services offered helpful advice, leading to a successful application for a publication subvention; my Chair in Asia-Pacific Legal Relations provided additional funding. In collaboration with Oxford University Press, we expect to be able to use some of this funding to make this volume widely accessible after publication.

At Oxford University Press, Jamie Berezin saw the value of this project from my very first email and helped to navigate the proposal through the review and editorial approval processes in what must have been record time. The Press's three anonymous reviewers provided invaluable constructive feedback that found its way into the volume in ways that I hope they will recognize. In Victoria, Nicholas Picard provided outstanding assistance with the editing process. More times than I can count, his work on this volume was described as “meticulous.” His dedication to and passion for the art of copyediting was indispensable to preparing the manuscript in a timely and professional way.

Mary Louise, Harriet, and Harley were inquisitive and supportive of this project. Charlie most certainly would have been too. Sharon, Rob, Ian, Owen, and Samantha were there for me, as always, and provided many happy distractions by phone and video-chat. My mother, Ruby, kept me company from Calgary by phone during my long walks through the neighbourhood, to the coffee shop

(take-out only), and to the beach—helping me to clear my mind, take pleasure in the small things, and keep everything in perspective. As always, the memory of my late father, Victor J., continues to inspire me in everything I do. There will always be another Victor Ramraj, so the “V.” remains ever a part of my identity, as does my love and gratitude, which knows no bounds.

I am overwhelmingly grateful to Sandy, Eli, and Satchel. On 18 March, we returned together from what was meant to be a short spring-break visit with Eli at university in Toronto. We spent the next three months in close quarters, working and studying from home as this book took shape. We were among the lucky ones, to be sure, and we made the most of our time together—adjusting to a new world as offices and workplaces shut down, neighbours skirted one another at distance, and queues at the grocery store had customers spaced two metres apart. As the evenings grew later and later in the final days of preparing this manuscript, our time together as a family energized and inspired me. It always does.

On behalf of all of the contributors, and all those who supported us behind the scenes, I invite you to turn the page—or scroll down or swipe along—and join us in our efforts to navigate our way out of the Covid-19 pandemic and better prepare for the next one.

Victor V. Ramraj  
Victoria, BC, Canada  
& Coast Salish Territory  
18 June 2020



INTRODUCTION  
AND BACKGROUND





# 1

## A Short History and Thematic Overview

*Victor V. Ramraj\* and Matthew Little\*\**

### 1. Introduction

This is a book for an extraordinary time, about a pandemic for which there is no modern precedent. It is a collection of essays on the law and policy contexts in Asia of the Covid-19 pandemic, caused by the SARS-CoV-2 virus which, in a matter of months after it was detected in Wuhan, China, swept around the globe, infecting millions of people and killing hundreds of thousands as of mid-2020, with no clear end in sight. It transformed daily life in almost every corner of the planet—from the empty streets of once-bustling Bangalore to the vacant classrooms of Singapore to the silent Olympic venues of Tokyo. In a matter of weeks, the unimaginable became ordinary: lockdowns of cities and entire countries, physical distancing and quarantines, border controls and shuttered air terminals, movement-tracking technology, mandatory closures of all but essential services, economic devastation and record-shattering mass unemployment, and government assistance programs on record-breaking scales. Yes, Covid-19 followed on the heels of other pandemics and epidemics from the Spanish Flu of 1918–1920 to, more recently, SARS, MERS, H1N1, Ebola, and Zika. We have much to learn from all of these outbreaks, and many governments already have. Yet a pandemic on the scale of Covid-19, under contemporary conditions of globalization, has left even the most attentive governments and their advisors scrambling to improvise solutions, often themselves unprecedented in modern times.

These extraordinary developments demanded both level-headed reflection and decisive action. On the one hand, governments need to take time to consider, refine, and evaluate legal and policy options, to coordinate with other governments and civil society, and to examine deliberately how one policy decision might affect or undermine another, triggering other problems requiring yet other policy responses. At the same time, the speed of the spread and the change

\* Chair in Asia-Pacific Legal Relations and Professor of Law, Centre for Asia-Pacific Initiatives and Faculty of Law, University of Victoria (<https://orcid.org/0000-0002-9663-9401>).

\*\* Assistant Professor, School of Public Health and Social Policy, University of Victoria (<https://orcid.org/0000-0001-6644-2336>).

in circumstances meant that time was short, with policy options implemented swiftly and refined along the way. In these circumstances, we have come together as a group of sixty authors with two goals. We seek in these pages to analyze legal and policy contexts and responses across Asia, identifying cross-cutting themes and challenges in the service of policy-making. Our essays compile, compare, and evaluate the policies, practices, and trade-offs that were made in the early months of Covid-19, offering fresh perspectives that might not have been considered in the heat of the policy-making or regulation-drafting moment. At the same time, we are attentive to the enduring issues and challenges that emerge in each particular context, establishing a scholarly baseline for further research after the storm has passed.

Although Covid-19 quickly became a global pandemic, a focus on responses in Asia is both practical and intellectually defensible for three main reasons. First, China was the epicentre of the pandemic, which spread throughout January and February to other parts of the region, including Japan, Thailand, Taiwan, India, and Vietnam. These areas formed the front line against the first wave of the pandemic. By the end of May 2020, as other countries such as the United States and Brazil eclipsed first-wave countries in terms of the number of infections and deaths, many countries in Asia braced for a second wave of infections, leading to new policy challenges that are being closely watched. Second, Asia's legal and political diversity—exemplified by the *adat*, Buddhist, Confucian, Hindu, Islamic, common-law, and civil-law traditions that have shaped its contemporary legal orders as well as the one-party communist states, multi-party democracies, dominant-party states, military-controlled governments, constitutional monarchies, and an absolute monarchy (among others) that define its political systems—provides a complex environment in which to study the challenges of policy responses and inter-governmental coordination, even without shifting to the global scale. And finally, Asia's sheer size, with a population of 4 billion people, constituting three-fifths of humanity, complicates matters even further. Asia's urban centres link closely by way of migrant labourers to remote and rural communities. These connections, along with vast income disparity and uneven access to health services, compound the scale of the policy challenges. "Asia" is, of course, a contentious construct, and it is important to acknowledge the ways in which geographic constructs are problematic. Yet, in the context of Covid-19, it provides a useful frame for analyzing the response to a virus whose spread around the world itself followed geographically defined patterns of human movement and economic interconnections. With this context in mind, we have come together—as the editor of this collection (a law professor) and an epidemiologist with a focus on Asia and global public health—with two goals for this chapter. The first is to provide a short history and epidemiological overview of the Covid-19 pandemic from its origin in Wuhan, China, to its spread across

Asia and around the world (section 2). The second is to situate the chapters within this collection and identify the five law and policy themes that provide its overall structure (section 3). We conclude with some reflections and questions on Asia's role in formulating responses to a pandemic in particular—and global crises more generally.

## 2. The First 100 Days: Epidemiology of Covid-19 in Asia

Coronavirus disease 2019 (Covid-19) is a severe respiratory illness caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). As is evident in its name, SARS-CoV-2 is a member of the family of *Coronaviridae* or coronaviruses: a group of viruses named for their studded protrusions that resemble a crown, which are used to gain access to cells during invasion. Perhaps this feature is fitting; coronaviruses could be considered royalty on the list of pathogens producing infectious disease pandemic scares in the twenty-first century, which began with Severe Acute Respiratory Syndrome (SARS) in 2003 before the emergence of Middle East Respiratory Syndrome (MERS) in 2012. Not all coronaviruses are as deadly as these examples—benign strains cause around one-third of common colds. Yet, SARS-CoV-2 and the disease it causes, Covid-19, has exceeded the human impacts of all known prior coronaviruses. The virus rapidly spread across the globe and, in a matter of months, brought humanity—along with its most distinguishing features: social connectivity, economic activity, and confidence in its dominance over nature—to its knees.

This section does not in itself attempt to provide a complete history of the Covid-19 pandemic. To do so would require several volumes, and regardless, the story is nowhere near finished at time of writing. Rather, we provide a brief narrative overview of the Covid-19 crisis, including important episodes and developments up to May 2020. We also attempt to incorporate some virology and epidemiological concepts to describe how and why SARS-CoV-2 spreads, what we know about Covid-19, and questions that remain yet. Our intention is to provide the reader with an understanding of events as they unfolded and the types of scientific evidence that inform decision-making to provide a context for the narrative accounts, arguments, and analysis in subsequent chapters.

### A. How Did the Pandemic Begin?

SARS-CoV-2 emerged in Wuhan, a city of 11 million inhabitants located in the Hubei province, China. Built at the confluence of the Yangtze and Huan Rivers, Wuhan is an important economic and transportation hub. In December 2019,

patients in Wuhan began presenting with symptoms suggestive of viral pneumonia.<sup>1</sup> Tests for influenza viruses and other known pathogens capable of causing such symptoms came back negative. By the end of December, as the number of ill in Wuhan grew, it was apparent to physicians and medical researchers in Hubei province that they were seeing an outbreak of pneumonia due to an “unknown agent”—in other words, this was a novel pathogen.

In a general sense, novel pathogens are nothing new. Yet among medical experts and epidemiologists, they inspire a frenetic sort of unease that tends to spill over into media reports and the collective psyche. With familiar pathogens—seasonal influenza (flu), for instance—we know how lethal it is, how quickly it spreads, how to contain it, and who is most vulnerable. With novel pathogens, due to the huge expanse of unknowns, the worst-case scenario is essentially infinite. Once a decade or so (sometimes more frequently), a novel pathogen emerges that exposes global vulnerabilities to large-scale pandemics—it happened with SARS and, perhaps most recently, 2009 influenza A (H1N1, known as swine flu). And since infectious disease experts have spent decades warning us that a perfect sort of pathogen could cripple human society (one that is infectious and deadly, with no effective vaccine and few clinical treatments), we are primed to fear the worst of each novel pathogen. On occasion, that fear is justified.

Infectious disease experts have spent much time investigating from where novel pathogens emerge. Most often, the answer is other animals. Zoonotic pathogens (causing zoonotic diseases) are those that are transmitted between animals and humans, and they account for over 60 per cent of the 330 or more known emerging human infectious disease events that have occurred since we started tracking them around 1940.<sup>2</sup> When a disease makes the jump from animals to humans, it is called a “spillover event.” Most infectious disease epidemics throughout history can be traced back to such events—if not by identifying a specific index patient (“patient zero”), then at least within approximation. SARS emerged from an unknown animal (likely bats) to civet cats before spilling over to humans in Guangdong province, China in 2003.<sup>3</sup> The natural animal reservoir for Ebola viruses is still debated, although recent evidence suggests that it circulates in some species of fruit bats in West Africa and has spilled over to human populations (possibly via primates) several times, beginning in 1976.<sup>4</sup>

<sup>1</sup> Pneumonia is a broad term for an infection of the lungs; it may be caused by bacteria, viruses, or even fungi.

<sup>2</sup> Kate E. Jones et al., “Global trends in emerging infectious diseases,” *Nature* 45, no. 7181 (2008): 990–993.

<sup>3</sup> Martin Enserink, “Clues to the animal origins of SARS,” *Science* 300, no. 5624 (2003): 1351–1351.

<sup>4</sup> Edward C. Holmes et al., “The evolution of Ebola virus: Insights from the 2013–2016 epidemic,” *Nature* 538, no. 7624 (2016): 193–200.

The human immunodeficiency virus (HIV) was likely endemic as a variant called simian immunodeficiency virus (SIV) in chimpanzees before it jumped to humans in central Africa in the 1920s, ultimately causing the AIDS epidemic.<sup>5</sup> Bubonic plague was caused by a bacteria called *Y. pestis* that likely emerged from rodents in the early 1300s. We could go on and on throughout history.

Spillover events like this, while difficult to predict, aren't totally random. The geographic origin of the Covid-19 pandemic was hardly a surprise to infectious disease experts: the southern and central regions of China have long been considered hot spots for emerging infectious diseases due to their high diversity of wildlife pathogens and animal-human milieus.<sup>6</sup> While media were quick to point fingers at live animal markets—or “wet” markets—as being ideal contexts for spillover events, the reality is likely much more complex. The emergence of SARS-CoV-2 undoubtedly exemplified many factors that lead to spillover events. Climate change is shifting the diversity of pathogens circulating in wildlife populations. Large-scale deforestation eliminates habitat for bats, primates, and other mammal species that serve as hosts for pathogens, forcing them to seek refuge in the ever-dwindling tracts of wild land or cohabit with humans in confined settings. Regional dietary preferences and poor enforcement of food safety guidelines (in live animal markets among other places) may facilitate disease transmission between captive animals and provide frequent close contact between humans and animal pathogens. Human population density and mobility are rapidly increasing, creating ideal conditions for human-to-human transmission; and cities in southern and central China are well-known for their dense slums and residential areas. It's likely that many of these factors contributed to a sequence of chance events that ultimately led to the spillover of SARS-CoV-2 into humans.

The Covid-19 outbreak in Wuhan was unique for several reasons, one of which being the rapid response of the scientific and public health community. On 31 December 2019, China notified the World Health Organization (WHO) that they were experiencing an outbreak of viral pneumonia of unknown origin. And by 7 January 2020, the agent was no longer unknown—virologists had sequenced the genome of SARS-CoV-2 and posted it online so other scientists (including vaccinologists) could access it. Less than two weeks later, an article in the *Lancet* reported that two-thirds of an initial cluster of forty-one patients hospitalized with Covid-19 had visited the Huanan Seafood Wholesale Market.<sup>7</sup> While the market had closed on 1 January 2020 after the Chinese Centre for

<sup>5</sup> Paul M. Sharp and Beatrice H. Hahn, “Origins of HIV and the AIDS pandemic,” *Cold Spring Harbor Perspectives in Medicine* 1, no. 1 (2011): a006841.

<sup>6</sup> Jones et al., “Global trends.”

<sup>7</sup> Chaolin Huang et al., “Clinical features of patients infected with 2019 novel coronavirus in Wuhan, China,” *The Lancet* 395, no. 10223 (2020): 497–506.

Disease Control first identified it as the site of a cluster of cases, this article immediately shone a global spotlight on the Huanan market and all live animal markets, not only as a suspected location for the emergence of SARS-CoV-2 but also for their potential as sites for future spillover events. It is currently suspected that SARS-CoV-2 emerged in bats before spilling over to humans through an intermediate host (perhaps pangolins), but it remains unclear whether the Huanan market was the origin or simply an important link in the outbreak.

## B. The Growing Crisis in Wuhan and International Spread

Regardless of its origin, it is believed that SARS-CoV-2 began spreading in Wuhan sometime in November 2019 before being detected in mid-December. By mid-January, once initial confusion began to clear, China initiated widespread testing of symptomatic patients and recorded steadily increasing cases, including many in cities outside of Wuhan. China remained the centre of the global outbreak during January and February 2020, during which they “rolled out perhaps the most ambitious, agile, and aggressive disease containment effort in history,” as described by the WHO.<sup>8</sup> By 23 January, the cities of Wuhan and Ezhou shut down public transportation, closing the airport and railway stations in an effort to curb the spread. Shortly thereafter, stay-at-home orders, universal temperature monitoring, masking, and handwashing were promoted and enforced. Resources were invested into case detection, isolation, and early treatment. Such containment measures were enabled by the widespread use of technology (e.g., mobile phone tracking and public surveillance) and the authoritarian nature of Chinese governance.

Despite the purported success of its containment measures, the Chinese government has faced heavy criticism for its management of information during the initial outbreak. Frustrations coalesced over the treatment of Li Wenliang, a thirty-four-year-old ophthalmologist in Wuhan. Over social media, Wenliang alerted medical school classmates to the outbreak he was witnessing on 30 December. These actions earned him a visit by state police, who summoned him for questioning. After Wenliang signed a statement admitting that he had “disturbed [the] social order,” he was released.<sup>9</sup> But soon afterwards, he was hospitalized for Covid-19 himself, eventually dying of it on 7 February. Chinese citizens rallied around Wenliang as a martyr of free speech and a symbol of the public

<sup>8</sup> World Health Organization, 2020, <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>.

<sup>9</sup> Eskild Petersen et al., “Li Wenliang, a face to the frontline healthcare worker. The first doctor to notify the emergence of the SARS-CoV-2, (COVID-19), outbreak,” *International Journal of Infectious Diseases* 93 (2020): 205–207.

health dangers of censorship. Critics were quick to imply that the government covered up the nature and severity of Covid-19, ultimately squandering valuable time and worsening the eventual peak of the pandemic.

Within weeks of its initial discovery, SARS-CoV-2 was rapidly spreading across Asia, and cases of Covid-19 began to appear in neighbouring countries. By 23 January, Thailand, Japan, Singapore, and Vietnam had all confirmed cases. By 25 January, Australia, Malaysia, Canada, and Nepal also reported cases. By the last week of January, things were moving fast: China was reporting over 1,000 new cases per day and fatalities grew rapidly; countries began repatriating citizens from the Wuhan region and enforcing border control against China; an additional thirteen Chinese cities enforced a lockdown; and many other countries were reporting outbreaks. On 30 January, after WHO Director-General Tedros Adhanom Ghebreyesus spent several days visiting with Chinese officials and witnessing the outbreak, he declared Covid-19 a “public health emergency of international concern,” noting the increased risk to countries with weak health systems.<sup>10</sup> Shortly over a month later, on 11 March 2020, Tedros returned to the WHO podium to declare Covid-19 a pandemic, defined as the “worldwide spread of a new disease.”<sup>11</sup> This declaration was likely spurred on by highly publicized outbreaks in Iran and Italy, which were dealing with a large number of cases, excess mortality, and overwhelmed hospital resources. At this point, it was abundantly clear: Covid-19 was something that all countries in the world would have to grapple with.

### C. What We Know about Covid-19: Tracking the Pandemic

Everything about the Covid-19 narrative is fast: the virus itself, the science, the increasing public fear, and the unprecedented fixation on unfolding events—all propagated by a globalized society in which travel, trade, and information-sharing occur almost instantaneously. When it was first identified, very little about SARS-CoV-2 and Covid-19 was known. But after January 2020, research on SARS-CoV-2 virology and Covid-19 epidemiology, treatment, and vaccines exploded at an exceptional rate. Billions of dollars of research funding flowed from government and private donors into population-based studies and research labs across the world in an attempt to gain an advantage on the virus. While an abundance of questions remains unanswered, we are rapidly compiling

<sup>10</sup> “Rolling updates on coronavirus disease (COVID-19),” World Health Organization, accessed 12 June 2020, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

<sup>11</sup> “Rolling updates.”



information about the virus and its behaviour. Most initial government responses to the pandemic were primarily concerned with limiting its community transmission and fatality. To understand the decisions made by governments, it's crucial to examine what we know about how Covid-19 spreads, how fatal it is, and how this understanding has evolved.

#### i. Transmission, Spread, and Symptoms of SARS-CoV-2

SARS-CoV-2 is a virus, which means that it is an infectious agent that can only replicate inside the cells of living things. It is spread when an infected individual releases aerosol droplets (while sneezing, coughing, speaking, or spitting) which are transmitted to another person either directly or through a fomite (an intermediate object). While there emerged some reports of airborne transmission, this is not widely accepted to be a primary mode of transmission.<sup>12</sup> Most transmissions seem to occur through close and prolonged contact with an infected individual (who may be symptomatic, pre-symptomatic, or asymptomatic), establishing a strong justification for personal protective equipment (e.g., face masks) and physical distancing measures that were adopted as a widespread public health recommendation by most Asian countries.<sup>13</sup>

Once infected, SARS-CoV-2 has varying pathological impacts on an individual. Asymptomatic infections appear to account for between 10 and 50 per cent of cases, with a meta-analysis concluding that this figure is close to 15 per cent.<sup>14</sup> Mild symptoms are common, including those often associated with a cold or flu (e.g., fever, runny nose, sore throat, and dry cough). In serious cases, gastrointestinal symptoms may present (e.g., nausea, diarrhea) and pneumonia may cause shortness of breath. In severe cases, hypoxia (low blood oxygen levels) occurs and may instigate multi-organ failure, resulting in death. Among hospitalized patients, physicians have also reported a confusing array of additional symptoms and complications, including blood clotting, stroke, and seizures.<sup>15</sup> Severity of symptoms is associated with age and sex, with males and those over seventy years old being at significantly higher risk of hospitalization and death. Additional risk factors for severe Covid-19 include co-morbidities such

<sup>12</sup> Neeltje Van Doremalen et al., "Aerosol and surface stability of SARS-CoV-2 as compared with SARS-CoV-1," *New England Journal of Medicine* 382, no. 16 (2020): 1564–1567.

<sup>13</sup> Isaac Ghinai et al. "First known person-to-person transmission of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in the USA," *The Lancet* (2020), [https://doi.org/10.1016/S0140-6736\(20\)30607-3](https://doi.org/10.1016/S0140-6736(20)30607-3).

<sup>14</sup> Hiroshi Nishiura et al., "Estimation of the asymptomatic ratio of novel coronavirus infections (COVID-19)," *International Journal of Infectious Diseases* 94 (2020): 154; O. Byambasuren et al., "Estimating the extent of true asymptomatic COVID-19 and its potential for community transmission: systematic review and meta-analysis," 2020, <https://www.medrxiv.org/content/10.1101/2020.05.10.20097543v2.full.pdf>.

<sup>15</sup> Thomas J. Oxley et al., "Large-vessel stroke as a presenting feature of Covid-19 in the young" *New England Journal of Medicine* 382, no. 20 (2020): e60.

as obesity, type 2 diabetes, and hypertension.<sup>16</sup> While best practices for treating Covid-19 varied and went through rapid flux, ventilators were used extensively for hypoxic patients (i.e., those with oxygen levels in blood), resulting in global shortages. Such shortages expose vast differences in the preparedness and resources that exist in different contexts—for example, as of March 2020, South Korea had one ventilator per 5,200 people, while the Philippines had one ventilator for every 90,000 citizens.

## ii. Epidemiology of Covid-19

The epidemiological curve of Covid-19—which shows the number of active cases over time in a specific population—became a highly publicized image during the pandemic. In general, if left unchecked, viruses tend to spread at an exponential rate before infecting most of the population and tapering off due to herd immunity.<sup>17</sup> Exponential growth can cause an explosion of cases before we have a chance at detection or intervention. The speed at which a point-source epidemic (meaning all cases originated from a single event) grows is a function of several factors. For our purposes, the most important determinant of growth is  $R_0$  (R-naught).  $R_0$  is the basic reproduction number—that is, the average number of new people infected by a single contagious person in a given context. If  $R_0$  is above 1, the epidemic curve continues to rise until herd immunity kicks in; if  $R_0$  is below 1, it tapers off. Preliminary estimates of the unchecked  $R_0$  of Covid-19 were between 1.4 and 6.5,<sup>18</sup> with the scientific consensus settling around 2–3. This means that, under uncontrolled circumstances, each infected individual will go on to infect 2–3 of their contacts, on average. Shuttering schools and restaurants, enforcing physical distancing, handwashing campaigns, and encouraging personal protective equipment—all these measures had a singular and distinct goal: to drive  $R_0$  below 1. An  $R_0$  below 1 ensures that each case passes the virus on to fewer than one other person, which will eventually bring us over the hump and into the downslope of the epidemiological curve. This is a simplified version of things—in reality, the susceptibility of a population changes as more people are immune following infection and recovery—but in general, the  $R_0$  is a fundamental concept in infectious disease epidemiology and played a role in decision-making throughout the pandemic. For most countries, the long-term

<sup>16</sup> R.E. Jordan, P. Adab, and K.K. Cheng, “Covid-19: risk factors for severe disease and death,” *BMJ (Clinical Research Ed.)* 368 (2020): m1198–m1198.

<sup>17</sup> Herd immunity is the resistance to the spread of a contagious disease within a population that results if a sufficiently high proportion of individuals are immune to the disease: O.S. Miettinen and I. Karp, *Epidemiological Research: An Introduction* (New York: Springer, 2012).

<sup>18</sup> Ying Liu et al., “The reproductive number of COVID-19 is higher compared to SARS coronavirus,” *Journal of Travel Medicine* 27, no. 2 (2020).

plan is to gradually reopen economies while keeping the  $R_0$  below 1—an effort that will no doubt involve considerable trial and error.

Another important concept that was highly contested (and remained so at the end of May 2020) is the case fatality rate (CFR). This is the percentage of people who die from a specific diagnosed infection and is a crude measure of how deadly a disease is. Estimating the CFR for Covid-19 in real time during the pandemic is extremely challenging. Yet, it is a crucial piece of data that informed and guided the responses of governments and public health authorities worldwide (not to mention driving public panic). While at first glance the CFR appears to be a simple calculation—you take the total number of deaths from Covid-19 and divide by the total number of cases—for a number of reasons, such figures tended to be wildly inaccurate. Sometimes, the inaccuracy lies in the numerator—patients dying *with* Covid-19 were often counted as deaths *due to* Covid-19, even though this may not have been the case. Or perhaps, patients dying of Covid-19 at home were not counted at all. Perhaps more often, however, the inaccuracy lies in the denominator—narrow testing criteria due to widespread test shortages meant that mild or asymptomatic cases of Covid-19 were often never tested to begin with and remained unconfirmed. Additionally, user error and imprecise tests likely lead to some false positives and false negatives, further skewing the accuracy of the denominator.

The CFR in the initial outbreak in Wuhan was calculated at 3.8 per cent.<sup>19</sup> While less deadly than SARS (CFR: 14 per cent)<sup>20</sup> and MERS (CFR: 43 per cent),<sup>21</sup> this is still about twenty times more fatal than the seasonal flu (CFR: 0.1 per cent). The perception of Covid-19 as a relatively deadly disease was further perpetuated by initial reports from northern Italy, Iran, and Spain, where initial CFRs were initially reported between 7.2 per cent<sup>22</sup> and 14 per cent.<sup>23</sup> Yet, in some contexts, CFR was reportedly considerably lower. For example, South Korea reported a CFR of 0.7 per cent.<sup>24</sup> Age structure of the population, air pollution, and prevalence of pre-existing health conditions may account for

<sup>19</sup> Lei Cao et al., “Estimation of instant case fatality rate of COVID-19 in Wuhan and Hubei based on daily case notification data,” [preprint] (2020), <https://www.medrxiv.org/content/10.1101/2020.03.11.20034215v1>.

<sup>20</sup> “Update 49 – SARS case fatality ratio, incubation period,” World Health Organization, last modified 7 May 2003, [https://www.who.int/csr/sarsarchive/2003\\_05\\_07a/en/](https://www.who.int/csr/sarsarchive/2003_05_07a/en/).

<sup>21</sup> Sami Al Hajjar, Ziad A. Memish, and Kenneth McIntosh, “Middle East respiratory syndrome coronavirus (MERS-CoV): a perpetual challenge,” *Annals of Saudi Medicine* 33, no. 5 (2013): 427–436.

<sup>22</sup> Graziano Onder, Giovanni Rezza, and Silvio Brusaferro, “Case-fatality rate and characteristics of patients dying in relation to COVID-19 in Italy,” *JAMA* 323, no. 18 (2020): 1775–1776.

<sup>23</sup> Anna Odone et al., “COVID-19 deaths in Lombardy, Italy: data in context,” *The Lancet Public Health* (2020), [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(20\)30099-2/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30099-2/fulltext).

<sup>24</sup> Eunha Shim et al., “Transmission potential and severity of COVID-19 in South Korea,” *International Journal of Infectious Diseases* 93 (2020): 339–344.

differences in reported CFRs between regions. But such disparities are more likely due to testing differences, with South Korea implementing broader testing criteria and capturing a larger proportion of mild or asymptomatic cases than most other countries. Resource capacity may also be factor, with widespread reports that hard-hit regions experienced over-taxed intensive care units and ventilator capacity, meaning that not all patients received life-saving treatment and increasing excess mortality.

Therefore, while region-specific CFR is impacted by a country's public health response to Covid-19, it is important to also question the accuracy of testing and reporting. Since initially we often only diagnose the most severe cases of disease, it's not uncommon for reported CFR to be quite high early in an epidemic before settling at a much lower figure (the "true" CFR or infection fatality rate; IFR). For evidence of this, we only need to look at the 2009 H1N1 influenza pandemic. Initial estimates emerging from Mexico suggested that over 0.5 per cent of cases were dying, inciting global fears of a deadly novel influenza pandemic. But these numbers were quickly adjusted as evidence emerged, and now most experts agree that the true CFR was somewhere around 0.02 per cent, or five times less deadly than the seasonal flu.<sup>25</sup> Already, we are seeing evidence that initial calculations of the Covid-19 CFR were overestimates of the true value. Some preliminary seroprevalence studies (which assess a random sample of the population for the existence of antibodies to identify ever-infected individuals) suggest that the CFR of Covid-19 may be closer to 0.5–1 per cent.<sup>26</sup> Such figures confirm the assertion that Covid-19 is considerably deadlier than the seasonal flu and severe enough to justify widespread public health concern. Additionally, one's risk of dying from Covid-19 is strongly influenced by age, co-morbidities, and healthcare resources. As a result, it's likely that marginalized and vulnerable populations (elderly and those with pre-existing health conditions, living in poverty, dealing with food insecurity, and/or in regions with poor healthcare capacity) will suffer disproportionately. Preliminary (mostly anecdotal) reports also suggest the possibility of long-term health consequences following survival of Covid-19 and associated sequelae, raising concerns about chronic disability.<sup>27</sup> It is reasonable to assert, therefore, that targeted and measured interventions to protect the most vulnerable and limit long-term disability are the best path forward for most Asian countries.

<sup>25</sup> Hiroshi Nishiura, "The virulence of pandemic influenza A (H1N1) 2009: an epidemiological perspective on the case–fatality ratio," *Expert Review of Respiratory Medicine* 4, no. 3 (2010): 329–338.

<sup>26</sup> Anthony S. Fauci, H. Clifford Lane, and Robert R. Redfield, "Covid-19 – navigating the uncharted," *New England Journal of Medicine* 382 (2020): 1268–1269.

<sup>27</sup> Lois Parshley, "The emerging long-term complications of Covid-19, explained," *Vox*, 12 June 2020, <https://www.vox.com/2020/5/8/21251899/coronavirus-long-term-effects-symptoms>.

## D. Varying Public Health Responses and Containment across Asia

As the virus spread throughout Asia in February through May 2020, this period was marked by countries enforcing varying responses to the same public health crisis. Overall, such responses have shaped a pandemic that looks different across countries, underscoring the crucial importance of governance in mediating how a crisis unfolds. While resource challenges affected responses in low- and middle-income countries, governments frequently made crucial decisions with their existing capacity and resources that affected the public health effectiveness of their overall response.

As early reports emerged from Wuhan of overcrowded hospitals and economic turmoil, several territories in Asia—for example, Taiwan,<sup>28</sup> Hong Kong,<sup>29</sup> Singapore,<sup>30</sup> South Korea,<sup>31</sup> and Vietnam<sup>32</sup>—immediately took the threat seriously and mobilized resources to pre-empt widespread illness by instituting strict screening of incoming travellers, rapid testing, and aggressive contact tracing.<sup>33</sup> Governments and media were also quick to point out that the countries that mobilized most rapidly were those that previously dealt with infectious diseases such as SARS and MERS and learned from these experiences.<sup>34</sup> On the other hand, some Asian countries—for example, Indonesia,<sup>35</sup> the Philippines,<sup>36</sup> and Myanmar<sup>37</sup>—established slower, decentralized, and poorly coordinated responses. Still other countries—including China<sup>38</sup>, India,<sup>39</sup> and Thailand<sup>40</sup>—flexed their authoritarian powers to enforce strict, almost militaristic lockdown and surveillance measures designed to stamp out the virus. Meanwhile, many Asian countries—including Japan,<sup>41</sup> Malaysia,<sup>42</sup> Sri

<sup>28</sup> Chang and Lin, Chapter 3, this volume. Unless specified otherwise, all subsequent references to a chapter and its number refer to chapters in this volume, *Covid-19 in Asia: Law and Policy Contexts*.

<sup>29</sup> Ho and Cheung, Chapter 17.

<sup>30</sup> De Visser and Straughan, Chapter 15.

<sup>31</sup> Chung and Lee, Chapter 16.

<sup>32</sup> Nguyen and Phan, Chapter 4.

<sup>33</sup> Contact tracing is a resource-intensive process in which all personal contacts of cases are tracked down and isolated for the fourteen-day incubation period. Notably, “test, trace, and isolate” became the mantra of South Korea’s public health response.

<sup>34</sup> Justin Fox, “What prepares a country for a pandemic? An epidemic helps,” *Bloomberg*, 18 March 2020, <https://www.bloomberg.com/opinion/articles/2020-03-18/covid-19-response-better-in-countries-with-sars-mers-coronavirus>.

<sup>35</sup> Hosen and Hammado, Chapter 21.

<sup>36</sup> Lau, Lincoln et al., “Challenges in controlling SARS-CoV-2 in a lower-middle income country and the potential unintended effects due to aggressive restrictions,” [preprint] (2020), <https://www.preprints.org/manuscript/202004.0130/v1>.

<sup>37</sup> Ostwald and Tun, Chapter 23.

<sup>38</sup> Xu and Liu, Chapter 2.

<sup>39</sup> Tremblay and George, Chapter 12.

<sup>40</sup> Leelapatana and Tangthavorn, Chapter 11.

<sup>41</sup> Ono and Matsui, Chapter 10.

<sup>42</sup> Tayeb and Por, Chapter 22.

Lanka,<sup>43</sup> and Cambodia<sup>44</sup>—chose a “middle ground” approach, in which travel restrictions, public education, and partial lockdowns were key components and testing and treatment were reserved for severe cases.

Such varying responses led to vast differences in confirmed cases and case fatality rates across different countries. Rapid and decisive action grounded in evidence and experience paid dividends; indeed, the measures enforced by South Korea, Hong Kong, Singapore, Taiwan, Malaysia, and Vietnam have thus far minimized community spread and avoided the high morbidity and mortality of Covid-19 seen elsewhere, all while limiting economic fallout and maintaining transparency and relative civil liberty. Indonesia and the Philippines<sup>45</sup> had some of the highest recorded case numbers and case fatality rates due to Covid-19 in the world. Meanwhile, Japan has seen limited community spread and low case fatality rates despite its loose public health restrictions, perhaps due to public obedience and cultural norms (e.g., mask wearing and bowing instead of handshaking as a greeting). Whether by luck, geographic and demographic differences, successful government interventions, or independent actions by the public and civil society, some Asian countries—including Sri Lanka, Mongolia,<sup>46</sup> and Bhutan<sup>47</sup>—have largely avoided the brunt of the Covid-19 pandemic. Meanwhile, consistent challenges include government transparency, testing capacity (which is poor in many low- and middle-income Asian countries), and differences in testing criteria, which all impact our ability to trust and compare the official disease statistics emerging from state agencies.

There is little doubt that various government policies influenced the emergence and spread of SARS-CoV-2, the severity and differential morbidity and mortality of Covid-19 in different contexts, and the secondary impacts—including the economic, social, and systemic repercussions. Government responses should justifiably be scrutinized to serve as lessons for the future. Issues of planning and preparedness, leadership and governance, transparency, and legitimacy all played substantial roles in how the epidemic was differentially perceived and responded to. This book will attempt to address why such decisions were made, how they played out, and their implications for health, policy, law, economy, and trade in Asia. As we face an uncertain future with a high risk of re-emergence of Covid-19 (the dreaded “second wave”) and future pandemics, it is crucial that such an exercise be more than purely academic and also serve as a conversation for establishing more efficient and resilient governance structures that are able

<sup>43</sup> Fonseka, Ganeshathasan, and Welikala, Chapter 24.

<sup>44</sup> Ly, Hing, and Soy, Chapter 20.

<sup>45</sup> Michael Arie Medina, “Preliminary Estimate of COVID-19 Case Fatality Rate in the Philippines using Linear Regression Analysis,” <https://ssrn.com/abstract=3569248>.

<sup>46</sup> Krusekopf and Jargalsaikhan, Chapter 28.

<sup>47</sup> Tshering and Dorji, Chapter 19.

to better respond to public health threats while minimizing the social and economic fallout.

### 3. Law and Policy Contexts

Governments are often acting on the evidence they have available at the time. SARS-CoV-2 is a novel pathogen, and while research evidence started to mount, many questions remained unanswered in the early months of the pandemic. HIV circulated among humans for sixty years before anyone noticed, and decades later, we are still learning new things about its behavior and effective treatments. It may take as long to fully understand the SARS-CoV-2 virus and Covid-19, the disease it causes. Yet, it is undeniable that the information governments chose to act on—and the actions they took—shaped the way the epidemic unfolded in different regions and countries. The essays in this collection seek to illuminate both the policy decisions and legal responses by governments in Asia in the five months following the outbreak, to the end of May 2020, and the broader contexts—social, political, historical—in which they responded. The essays seek to capture the zeitgeist of the historical moment but also to tense out the enduring issues and lingering questions that emerge from governmental and societal responses. Although most of the essays are cross-cutting and multidimensional in their approach, they are clustered around five themes: first-wave containment measures; emergency powers; science, expertise, and technology; politics, religion, and governance; and economy, climate, and sustainability.

#### A. First Wave Containment Measures

Despite our efforts to encapsulate the latest science on the origin of the virus, the political controversy and recriminations around it will continue for some time, not least because it is so deeply entwined with geopolitics. Even before the emergence of the pathogen, the United States and China were embroiled in on-again, off-again trade and political tensions; cross-strait relations between Taiwan and Mainland China remained tenuous, often exacerbated by military exercises in the Taiwan Strait and the South China Sea; and the 2019 protests in Hong Kong led to rising tensions within the Special Administrative Region and with China. Meanwhile, China's Belt and Road Initiative and expanding ties to its neighbours, coupled with a nationalistic "America First" policy under US President Donald Trump, were transforming the region. Even against this geopolitical background, the territories on the front lines of the outbreak—among

them, China, Hong Kong, Taiwan, and Vietnam—had prior experience with epidemics and were prepared to act.

The first set of essays in this collection therefore considers the responses of these jurisdictions to the first wave of infections, examining: the Chinese government's initial response to the outbreak as its legal and bureaucratic machinery kicked into high gear, its extensive use of surveillance technology and community-based enforcement to contain the virus, and ensuing challenges of socio-economic stability, food security, and China's place in the world;<sup>48</sup> Taiwan's swift response, despite its exclusion from the WHO, as it implemented incremental measures, including entry controls, quarantines, and digital enforcement measures, among others, while mobilizing local communities and responding to civil society criticism;<sup>49</sup> and Vietnam's decision early in the outbreak to prioritize public health and containment even at the cost of economic growth, leading to effective first wave containment.<sup>50</sup> The chapters in this part also consider some of the early dilemmas they faced—decisions about managing information and misinformation and the role of mass media in containing the pandemic—highlighting critical differences among the responses of China, Taiwan, and Hong Kong.<sup>51</sup> In addition to managing information, governments across the region started to control entry at their borders, eventually restricting international arrivals almost entirely as the pandemic spread—raising profound legal and normative questions about the significance of citizenship, residence, status, and the role of the state in an interdependent world.<sup>52</sup> Meanwhile, as the economic fallout of the pandemic became clear, central banks moved quickly to respond, adapting and refining a range of fiscal measures developed in response to a distinct, non-public health crisis, the Global Financial Crisis of twelve years earlier, even as they struggled to understand and adapt to the unique aspects of a pandemic.<sup>53</sup> As these chapters show, the questions that arose on the front lines of the pandemic—the speed, transparency, and accountability of the governmental response; the hardening of borders and the use and strictness of technology in imposing quarantine measures; and the need for a decisive fiscal response to the economic and social fallout—anticipated the key challenges that were soon to confront governments across Asia and in a matter of weeks, around the world.

<sup>48</sup> Xu and Liu, Chapter 2.

<sup>49</sup> Chang and Lin, Chapter 3.

<sup>50</sup> Nguyen and Phan, Chapter 4.

<sup>51</sup> Wu, Chapter 5.

<sup>52</sup> Neo and Lee, Chapter 6.

<sup>53</sup> Hofmann, Chapter 7.



## B. Emergency Powers

Containing a pandemic requires immense sacrifices on the part of individuals, families, communities, businesses, associations, religious organizations, schools, and hospitals not normally required of them; these sacrifices might be made willingly and voluntarily or imposed by governments through various forms of coercion or punishment. How governments choose to respond through law can have laudatory or perilous consequences. In some jurisdictions, the legacy of colonial legal mechanisms is evident, raising concerns about the ways in which their modern successors centralize and normalize “totalizing” legal technology for containing the virus; legal responses can divide individuals and groups, alienating the most vulnerable, such as migrant workers, even as they seek to contain the virus.<sup>54</sup> Whether governments invoke the language of an emergency and the formal legal tools crafted for that purpose, respond through existing legislation or a special legal regime for the pandemic—or seek to use other forms of persuasion and containment might be as much a product of historical, political, and social context and the level of trust between the government and its citizens and residents. However, the choice of how to respond through law raises important questions about the potential for abuse of power and the role of expertise and its limits.<sup>55</sup>

Across the region, the formal legal responses differ widely. Japan responded initially through its *Infectious Disease Prevention Act*, although it later declared a formal state of emergency. But the limited formal effect of that declaration meant that it could only request, but not compel, everyone to stay at home, leading to a call by the authors of the case study for a review of the public health and emergency powers regime.<sup>56</sup> Thailand, which has long oscillated between military regimes and civilian governments, tailored its response to the pandemic by invoking a range of executive measures, including a formal state of emergency, raising questions as to whether this response will further calcify Thailand’s shift to authoritarian rule and paternalistic nationalism, leading to greater social upheaval.<sup>57</sup> For its part, India avoided declaring a formal emergency, but instead drew on long-standing public health legislation to impose a series of country-wide lockdowns, devastating vulnerable populations and exacerbating already-heightened ethnic tensions.<sup>58</sup> In these situations, the impact of the formal legal measures on containment efforts will gradually become clear. Less certain is the

<sup>54</sup> Chua and Lee, Chapter 8.

<sup>55</sup> Ramraj and Thiruvengadam, Chapter 9.

<sup>56</sup> Ono and Matsui, Chapter 10.

<sup>57</sup> Leelapatana and Tangthavorn, Chapter 11.

<sup>58</sup> Tremblay and George, Chapter 12.

longer-term effect of legal measures on the power of the state over its population, particularly its most vulnerable and marginalized members.

### C. Science, Expertise, and Technology

The role of scientific information, expertise, and technology is a critical part of the Covid-19 story, as it unfolded in the early stages of the outbreak. The WHO has long been a focal point to build healthcare capacity among its members and assist them in responding to epidemics and pandemics. In its ideal functioning, it functions apolitically, providing timely, expert advice to governments and affected populations, serving as a clearing house for information and advice, and countering misinformation. As the chapters in this volume demonstrate, however, despite the WHO's successes (with its modest resources) in addressing other outbreaks and assisting governments in developing response strategies, it remains caught up in geopolitical rivalries; its hands are also tied by procedural requirements that prevent it from notifying governments of public health threats in a timely way,<sup>59</sup> often leaving it to governments (including those excluded from the WHO, such as Taiwan) to respond on their own, undermining the role of the WHO as an apolitical, technocratic institution. Even apart from the WHO, however, many national governments swiftly deployed the latest technology to facilitate public health measures, from enforcing quarantines to tracing contacts and disseminating information about local transmission hotspots and safe zones. In so doing, they raised serious questions about the trade-offs between responding quickly and protecting privacy.<sup>60</sup>

Drawing on its experience of SARS, Singapore adopted a technocratic, whole-of-government approach to the pandemic and imposed a series of public health measures, labelled a “circuit breaker,” to contain transmission and promote social solidarity. As in South Korea, Singapore used technology to facilitate quarantine measures and contact tracing. However, its initial failure to consider the crowded dormitory living conditions of migrant workers in crafting its response led to a spike in cases in April, prompting a swift governmental response and some social-searching about the plight of migrant workers and their place in Singapore society.<sup>61</sup> For its part, the South Korean government drew on the country's experience of MERS to craft its response, working closely with the private sector to develop and deploy technology to assist with quarantines and contact tracing and to convey information on local outbreaks to the population,<sup>62</sup>

<sup>59</sup> Breau and Preethi, Chapter 13.

<sup>60</sup> Li, Phusamruat, Clear, and Damian, Chapter 14.

<sup>61</sup> *See also* Chua and Lee, Chapter 8, and Lansdowne and Lawson, Chapter 30.

<sup>62</sup> Chung and Lee, Chapter 16.

raising questions about limits of intrusive technologies in a democracy—providing an important case study of the extent to which privacy may be limited in the interests of public health. While both Singapore and South Korea relied heavily on public health expertise in formulating their responses, experts and medical professionals serve not only as advisors to governments, but can also take on a more public, activist role in demanding action from government. For example, in Hong Kong, healthcare professionals took industrial action in February to mobilize a public response, reviving the memory of SARS, and prompting a stronger public health response by the government.<sup>63</sup>

#### D. Politics, Religion, and Governance

While in some contexts, efforts to contain the pandemic have been driven by information, expertise, and technological innovation, in other contexts, the response has been informed in significant measure by religious and political conditions. Depending on the context, religious groups have either supported or undermined governmental strategies. In other situations, domestic political rivalries or power struggles sometimes linked to regional and global economic realities. In Sri Lanka, for instance, religious groups have sought to adjust their rituals and practices in response to physical distancing protocols, assisting those in need<sup>64</sup>—even as, in the realm of high politics, the pandemic has strengthened executive power, leading to democratic backsliding.<sup>65</sup> Meanwhile, in Indonesia, partisan political rivalries, tensions between the medical profession and the government, and resistance by religious organizations to indecisive public health guidelines hampered containment efforts.<sup>66</sup>

In Malaysia, too, the government's response was hampered by political rivalries, with an unfolding political drama diverting public attention and energy away from early containment efforts. The new government's belated response found Malaysia grappling with xenophobia directed at migrant workers and, especially, Rohingya refugees; economic disruptions to livelihoods and businesses; and further concentrations of executive power at the expense of democratic institutions—even as community organizations and volunteers scrambled to help the most vulnerable.<sup>67</sup> Elsewhere in Southeast Asia, Myanmar and Cambodia were hit hard by the repatriation of workers returning from Thailand, its economy having sputtered; while at least in the first half of 2020, neither

<sup>63</sup> Ho and Cheung, Chapter 17.

<sup>64</sup> Schonthal and Jayatilake, Chapter 18.

<sup>65</sup> Fonseka, Ganeshathasan, and Welikala, Chapter 24.

<sup>66</sup> Hosen and Hammado, Chapter 21.

<sup>67</sup> Tayeb and Por, Chapter 22.

country was particularly hard hit by the virus, the economic consequences were profound, exposing the dependency of both on their economic ties to their neighbours, including China.<sup>68</sup> In Myanmar, the “shockwaves” from the pandemic are likely to have “profound implications for [its] economic, political, and peace transitions.”<sup>69</sup> In Cambodia, the government used the Covid-19 pandemic as an opportunity to enhance executive power by enacting emergency powers legislation while managing its delicate political and economic relationships with China, Europe, and the United States.<sup>70</sup> For its part, the Kingdom of Bhutan—a constitutional monarchy since 2008—saw the fifth king assuming a prominent leadership role, as party leaders set aside partisan politics to respond to the pandemic—even as the chief abbot, in the majority-Buddhist kingdom, advised followers to support the king and government and practice their religion at home.<sup>71</sup>

### E. Economy, Climate, and Sustainability

The pandemic’s public health crisis was accompanied by a global economic crisis, with job losses rivalling the Great Depression and business failures and bankruptcies on a mass scale. In most jurisdictions, some of these losses were partially mitigated by significant government intervention, not only through central bank measures but also moratoriums on contractual obligations, debt payments, unemployment and small business support, adjustments to insolvency laws, and infrastructure investments.<sup>72</sup> With travel bans and border controls preventing most international travel, airlines teetered on the brink of collapse, as the industry faced a crisis more severe than after the 11 September 2001 terrorist attacks in the United States, with a fundamental industry restructuring increasingly likely—with options from nationalization to consolidation and rationalization all on the table.<sup>73</sup> The future of international trade arrangements remained uncertain, with economic dependencies and vulnerabilities in sharp relief—not only in Cambodia and Myanmar, mentioned earlier, but also Mongolia, which sends most of its coal and copper across its southern land border to China.<sup>74</sup> With supply chains disrupted in the midst of US-China trade tensions (and

<sup>68</sup> See, respectively, Ostwald and Tun, Chapter 23, and Ly, Hing, and Soy, Chapter 20.

<sup>69</sup> Ostwald and Tun, Chapter 23.

<sup>70</sup> Ly, Hing, and Soy, Chapter 20.

<sup>71</sup> Tshering and Dorji, Chapter 19.

<sup>72</sup> Tan and Wang, Chapter 25.

<sup>73</sup> Lee and Dy, Chapter 26.

<sup>74</sup> Krusekopf and Jargalsaikhan, Chapter 28.

uncertainty over the political and economic trajectory of Hong Kong<sup>75</sup>), regional trading blocks seems more resilient in the face of an economic crisis.<sup>76</sup>

Even before the Covid-19 pandemic, the planet was already facing climate crisis. Although the pandemic wrought economic devastation, it also opened an unprecedented opportunity to tailor recovery packages “oriented toward economic growth and net-zero emission pathways.”<sup>77</sup> Although these opportunities may not all be taken up, the pandemic has exposed the fragility of a high-carbon economy and the dangers of an over-reliance on fossil fuels—and the increasing pressure on governments, export credit agencies, and corporate boards of directors to scrutinize their support for and investment in this increasingly high-risk industry.<sup>78</sup> In similar fashion, the pandemic has highlighted the vulnerability of the region’s migrant workers, dispersed around the region and the world in diasporic communities and often embedded in the very supply chains—and care chains—whose fragility in a “just-in-time economy” has been exposed.<sup>79</sup> Even after the pandemic’s devastation to lives, families, and livelihoods has passed into history, the implications for the global political economy, the climate crisis, and social inequality will be with us for years to come.

#### 4. Asia and Global Challenges

With its provenance in Wuhan, the story of the Covid-19 pandemic began in China, spreading quickly across Asia and around the world. As with many global challenges, Asia looms large in fashioning crisis responses. Its vast population and sheer diversity—from the diverse legal and political systems to the variety of its religious and cultural systems, its disparate geography, and the range of its social and income inequality—provide an opportunity to assess how the epidemiological principles set out in section 2 of this chapter translate—or not—into a wide range of distinct concrete laws and policies to address both the public health consequence of the pandemic and its economic, social, and political fallout. The chapters in this volume make it clear that there is no unique or distinctive “Asian” approach to a pandemic.

This chapter and the others in this collection were written both to capture these extraordinary moments but also with an eye to the future. Taken as a

<sup>75</sup> “Hong Kong turmoil threatens to disrupt \$4tn investment flow,” *Nikkei Asian Review*, 7 June 2020, <https://asia.nikkei.com/Spotlight/Datawatch/Hong-Kong-turmoil-threatens-to-disrupt-4tn-investment-flow>.

<sup>76</sup> Calvert and Ciuriak, Chapter 27.

<sup>77</sup> Ghaleigh and Burrows, Chapter 29.

<sup>78</sup> Ghaleigh and Burrows, Chapter 29.

<sup>79</sup> Lansdowne and Lawson, Chapter 30.

whole, this volume provides students, researchers, policy-makers, and historians looking back on the early months of Covid-19 with an opportunity to consider what worked and what didn't, and what principles and values might be defended or traded off of other objectives, and by whom, in the midst of a crisis. In particular, it offers multiple perspectives on many of the lingering questions that will remain with us long after the pandemic is behind us: What difference does it make whether a government is more or less democratic or authoritarian in its legal framework and its overall political orientation? What role does science play in informing policy-making and securing public cooperation more generally? What are the mechanisms for integrating evidence and expertise into public decision-making, and what are the limits of doing so? How do non-governmental actors—from religious groups to professional associations and community organizations—support or undermine public health or other crisis management goals? What are the lessons of Covid-19 for collective responses to other challenges exposed by the pandemic—from social inequality to the climate crisis and making business and trade just and sustainable? These are not easy questions. We hope the chapters will provoke reflection, debate, and action as we seek, collectively, to address them.



PART I  
FIRST WAVE CONTAINMENT  
MEASURES





## 2

# China: Community Policing, High-Tech Surveillance, and Authoritarian Durability

*Feng Xu\** and *Qian Liu\*\**

### 1. Introduction

The Covid-19 outbreak started in China, the world's second-largest economy and an increasingly prominent global leader. Wuhan, the capital city of Hubei province, is one of the nation's intermodal transportation and industrial hubs.<sup>1</sup> The dense domestic and global network of just-in-time supply chain production and human travel accelerated the speed and expanded the scale of the transmission of the disease to a point no one alive has seen before.<sup>2</sup> The outbreak thus posed internal and external challenges to the legitimacy of the Chinese Communist Party (CCP).

China's cadre responsibility system links specified, quantifiable policy outcomes to performance rewards; available evidence suggests that, as with SARS, local officials in China initially concealed the outbreak, but once Covid-19 was officially acknowledged, government responses were aggressive and coordinated.<sup>3</sup> China's SARS experience (2003) and the Wenchuan earthquake (2008) stimulated a well-developed regulatory system and governance infrastructure to address the current outbreak. Beyond the state's disaster-response capacity, wartime mass mobilization down to the long-standing community policing role of neighbourhood communities (*shequ*), together with recently developed high-tech surveillance tools,<sup>4</sup> are crucial to China's success. The future legitimacy of the CCP and China abroad now depends on an effective economic re-launch

\* Associate Professor, Department of Political Science, University of Victoria.

\*\* Associate, Centre for Asia-Pacific Initiatives, University of Victoria (<https://orcid.org/0000-0001-7603-2146>).

<sup>1</sup> Laurie Garrett, "Just in Time for Lunar New Year, Another SARS-like Epidemic Is Brewing in China," *Foreign Policy* (blog), accessed 8 May 2020, <https://foreignpolicy.com/2020/01/08/lunar-new-year-hong-kong-pneumonia-sars-epidemic-wuhan/>.

<sup>2</sup> For a more detailed account of the emergence and spread of Covid-19, see introductory chapter of this volume.

<sup>3</sup> James Lawson and Feng Xu, "SARS in Canada and China: Two Approaches to Emergency Health Policy," *Governance* 20, no. 2 (2007): 209–32. See also Wu, Chapter 5, this volume.

<sup>4</sup> See Li, Phusamruat, Clear, and Damian, Chapter 14, this volume.

amid the global pandemic. Establishing China's global leadership is integral to the "China Dream and National Rejuvenation" project and to ensuring the livelihood of the Chinese population, particularly with respect to a stable and sufficient supply of food and other necessities. While economic performance, social stability, and nationalism have endured as the bases of the Party-state's legitimacy, maintaining the Party's political control has remained a core mission.<sup>5</sup>

This chapter has three sections. The first briefly introduces China's emergency responses to the pandemic. The second investigates its legal and social prevention and control mechanisms, most notably community policing and surveillance technology. The third considers serious challenges that emerged in the early stages of the pandemic. At this moment, it appeared China would "normalize" the pandemic, which appeared to be far from over.

## 2. China's Legal, Regulatory, and Institutional Emergency Measures: Lessons from SARS

Laws relating to infectious diseases, public health emergencies, and emergency responses were all developed long before the current outbreak.<sup>6</sup> They have enabled the Chinese government to respond swiftly and flexibly to the coronavirus. After SARS, China introduced legal instruments on public health emergency preparedness that had been missing. More specific Regulations on Dealing with the Outbreak of Public Health Emergencies (hereafter "Regulations")<sup>7</sup> and the Measures on the Prevention, Treatment, and Management of SARS (hereafter "Measures")<sup>8</sup> were developed during the SARS outbreak, covering information reporting, treatment, and prevention.<sup>9</sup> The National People's Congress revised the 1989 *Law on the Control of Infectious Diseases* significantly in 2004, with many key articles incorporated from the Measures. After SARS, China proclaimed the *Emergency Response Law* in 2007.<sup>10</sup> Of these, only the *Law on the Prevention and Treatment of Infectious Diseases* has a privacy stipulation.

<sup>5</sup> André Laliberté and Marc Lanteigne eds., *The Chinese Party-State in the 21st Century: Adaptation and the Reinvention of Legitimacy* (London; New York: Routledge, 2008).

<sup>6</sup> Specifically, *The Law on the Prevention and Treatment of Infectious Diseases*, the *Regulations on Dealing with the Outbreak of Public Health Emergencies*, and the *Emergency Response Law*.

<sup>7</sup> "突发公共卫生事件应急条例" [Regulation on the Urgent Handling of Public Health Emergencies] (2003), [http://www.gov.cn/zwggk/2005-05/20/content\\_145.htm](http://www.gov.cn/zwggk/2005-05/20/content_145.htm) [title translated, here and elsewhere in this chapter].

<sup>8</sup> "传染性非典型肺炎防治管理办法 [Measures for the Prophylaxis and Treatment of Contagious Atypical Pneumonia]" (2003), [http://www.gov.cn/banshi/2005-08/01/content\\_19099.htm](http://www.gov.cn/banshi/2005-08/01/content_19099.htm).

<sup>9</sup> For more information, see Chenglin Liu, "Regulating SARS in China: Law as an Antidote," *Washington University Global Studies Law Review* 4, no. 1 (2005): 81–120.

<sup>10</sup> "Emergency Response Law of the People's Republic of China," 北大法宝, accessed 7 April 2020, <http://en.pkulaw.cn/display.aspx?cgid=cd9485d6dac8d69abdfb&lib=law>.

These instruments define the duties and obligations of individuals and work units and specify how healthcare institutions should deal with patients, suspected carriers, and those exposed to the virus. They stipulate police powers over people who refuse treatment or quarantine; and they prescribe that local authorities, on orders from their immediate superiors, can shut down markets, theatres, schools, and other gathering places. Governments of various levels are now able to react and take measures rapidly.

Several institutions were set up post-SARS to centralize disaster management and improve coordination. A spokesperson system covering all government departments and levels ensures centralized control of public information dissemination, while projecting an image of open and transparent government. The State Council set up a permanent disaster management task force, the State Council Emergency Management Office, with its own personnel and budget.<sup>11</sup> The Chinese Centre for Disease Control and Prevention (CDC) was set up in 2018, albeit as an administrative unit under the National Health Commission. That status does subject the CDC to administrative interference: it lacks institutional independence in a public health emergency.<sup>12</sup>

Mass mobilization dominated the emergency response of the Party, which took control of all decision-making, with Xi Jinping as the commander leading a Chinese “people’s war” to block Covid-19’s spread.<sup>13</sup> Community policing, supported by social organizations and foundations, was the “front line.” Relevant ministries have also quickly formulated and issued numerous policies and guidelines regarding disease prevention and control, as well as pandemic-related issues such as economic and financial aid to affected sectors, and sick-leave policy for workers infected or quarantined. Similar policies and regulations followed at subnational levels.

This institutionalization and Party-state decision-making control in the crisis is paradoxical. Early on, a Leading Group for Novel Coronavirus Prevention and Control was formed at the central and local level. This suggests institutionalization and legalization of emergency preparedness has not led to Weberian legal-rational bureaucracy because mass mobilization stood out in China’s specific pandemic response, albeit with laws and regulations providing an overall framework.<sup>14</sup> That said, pre-reform Maoism has not returned, something that brings

<sup>11</sup> Sebastian Heilmann ed., *China’s Political System* (Lanham: Rowman & Littlefield, 2017), 367.

<sup>12</sup> 欧阳康, 贾平, 雷瑞鹏, “以深化改革应对公共卫生安全严峻挑战 [Handling Challenges of Public Health Emergency through Reforms],” accessed 13 May 2020, <http://isg.hust.edu.cn/info/1017/1983.htm>.

<sup>13</sup> “万众一心迎挑战, 众志成城战疫情: 全国总动员打响疫情防控阻击战纪实 [Fighting the Pandemic Together: A National Campaign to Prevent the Covid-19 Outbreak],” *Xinhua Net*, 26 January 2020, [http://www.xinhuanet.com/politics/2020-01/26/c\\_1125504350.htm](http://www.xinhuanet.com/politics/2020-01/26/c_1125504350.htm).

<sup>14</sup> Joseph Fewsmith and Andrew J. Nathan, “Authoritarian Resilience Revisited: Joseph Fewsmith with Response from Andrew J. Nathan,” *Journal of Contemporary China* 28, no. 116 (4 March 2019): 167–179, <https://doi.org/10.1080/10670564.2018.1511390>.

its own problems. For instance, public health, even post-SARS, has favoured for-profit medicine, rather than a strict emphasis on prevention and emergency preparedness.

The “people’s war” metaphor is used today: the “enemy” is the virus, the “friend” is the Chinese people, who rally around the CCP to win the battle. Facing this strategy against Covid-19, some local officials over-complied, sometimes either personally ordering or turning a blind eye to the actions of subordinates that technically violated laws. Some blocked roads to villages; some disclosed personal information of potentially infected persons. Most egregiously, some measures discriminated against residents of heavily infected areas; some residential communities, or *xiaoqu*, forbade non-locals from returning or banned tenants from entering their apartments.<sup>15</sup>

### 3. Community Policing and Surveillance Technology

In an earlier comparative study of China’s SARS response, one of us wrote, “siege and blockade captured key underlying principles of China’s response to SARS.”<sup>16</sup> A similar strategy has marked responses to Covid-19, now aided by advanced surveillance technology. China has imposed the world’s largest-known quarantine. On 23 January 2020, for the first time in its history, China closed off Wuhan, canceling outbound planes and trains and suspending urban public transportation.<sup>17</sup> Meanwhile, thirty provinces across China activated top-level emergency responses on 26 January.<sup>18</sup> To enforce the national lockdown and quarantine, criminal law punishes rule-breakers who spread disease. The first case came in Zhejiang on February 9, with the court sentencing a citizen to nine months’ incarceration after attacking police officers enforcing quarantine.<sup>19</sup>

After China gained control over community transmissions, it emphasized imported cases. Invoking the Frontier Health and Quarantine Law and the Covid-19 Prevention Measures (6th edition), it imposed a fourteen-day

<sup>15</sup> 财新社论, “社论: 疫情防控是依法治国的压力测试 [The Control of the Pandemic Is a Stress Test of the Rule of Law],” *Caixin (Online)*, 17 February 2020.

<sup>16</sup> Lawson and Xu, “SARS in Canada and China,” 213.

<sup>17</sup> “武汉市新型冠状病毒感染的肺炎疫情防控指挥部通告 (第1号) [Notice on Wuhan New Coronavirus Infection Pneumonia Epidemic Prevention and Control (No. 1)],” 23 January 2020, [http://www.gov.cn/xinwen/2020-01/23/content\\_5471751.htm](http://www.gov.cn/xinwen/2020-01/23/content_5471751.htm).

<sup>18</sup> “Top-Level Response to Coronavirus Activated in 30 Chinese Provincial-Level Regions,” *Xinhua Net*, accessed 8 May 2020, [http://www.xinhuanet.com/english/2020-01/26/c\\_138734601.htm](http://www.xinhuanet.com/english/2020-01/26/c_138734601.htm).

<sup>19</sup> 吴帅帅, “浙江宣判首例违反居家隔离规定妨碍公务案件 [Zhejiang’s First Court Decision on the Violation of Self-quarantine Regulations and the Crime of Hindering Public Service],” *Xinhua Net*, 9 February 2020, [http://m.xinhuanet.com/2020-02/09/c\\_1125550769.htm](http://m.xinhuanet.com/2020-02/09/c_1125550769.htm).

quarantine on returnees to China.<sup>20</sup> Some infected persons who had travelled overseas but concealed their travel history, spreading the disease, were arrested and charged.<sup>21</sup>

In 2003, “the neighbourhood policing system was rapidly converted to SARS detection.”<sup>22</sup> Urban residents committees were created in 1954 to ensure local neighbourhood monitoring for CCP control over the cities.<sup>23</sup> In recent decades, as work units reduced their surveillance infrastructure, urban residents committees, renamed as communities (*shequ*), assumed a greater surveillance role.<sup>24</sup> Against Covid-19, authorities consider *shequ* “a crucial firewall.”<sup>25</sup> Xi Jinping emphasized their key role as a “battlefield” of great importance in the “people’s war,” echoing language used against SARS.<sup>26</sup>

Authorities also consider “urban community grid management” key to virus containment.<sup>27</sup> The Central Political and Legal Affairs Commission issued a Notice emphasizing these personnel in the combat against Covid-19.<sup>28</sup> Under this system, a *shequ* comprises several blocks, each monitored by a person designated to submit information and identify issues on housing and facilities, social organizations, sanitation, and so on.<sup>29</sup> The success in relying on *shequ* for virus containment nationwide motivated the authorities to issue further policies

<sup>20</sup> 李祺瑶, “今起所有境外进京人员集中隔离观察14天[Those Who Enter Beijing Must Quarantine for 14 Days from Now On],” 16 March 2020, [http://www.gov.cn/xinwen/2020-03/16/content\\_5491761.htm](http://www.gov.cn/xinwen/2020-03/16/content_5491761.htm).

<sup>21</sup> 王迪, “该! 郑州郭某鹏出院后被刑拘! 曾7天游3国隐瞒境外旅居史 [Mr. Guo Under Arrest after Discharging for Failing to Report Travel History],” 民生周刊 [*Minsheng Weekly*], 28 March 2020, [http://mp.weixin.qq.com/s?\\_\\_biz=MjM5ODE5MTgzMg==&mid=2651624412&idx=1&sn=9c5c9ae5c7ac32e5536c643f3c841bb&chksm=bd36446b8a41cd7d89f0e07671e6fd2fa95d916e16e78f5b15ff657aa0cb793bf1ee3c7801f8#rd](http://mp.weixin.qq.com/s?__biz=MjM5ODE5MTgzMg==&mid=2651624412&idx=1&sn=9c5c9ae5c7ac32e5536c643f3c841bb&chksm=bd36446b8a41cd7d89f0e07671e6fd2fa95d916e16e78f5b15ff657aa0cb793bf1ee3c7801f8#rd).

<sup>22</sup> Lawson and Xu, “SARS in Canada and China,” 217.

<sup>23</sup> Judith Audin and Katharine Throssell, “Governing through the Neighbourhood Community (Shequ) in China,” *Revue Française de Science Politique* 65, no. 1 (2015): 1; Toby Lincoln, “The Urban History That Makes China’s Coronavirus Lockdown Possible,” *The Conversation*, accessed 23 April 2020, <http://theconversation.com/the-urban-history-that-makes-chinas-coronavirus-lockdown-possible-132616>.

<sup>24</sup> Audin and Throssell, “Governing through the Neighbourhood Community (Shequ) in China,” 1; Lawson and Xu, “SARS in Canada and China,” 217; Lincoln, “The Urban History That Makes China’s Coronavirus Lockdown Possible.”

<sup>25</sup> “这道疫情防控的重要防线习近平高度重视[Xi Jinping Emphasizes the Importance of Residential Committees in the Combat against Covid-19],” 人民网 [*Renmin Net*], 13 April 2020, [http://www.qstheory.cn/zdwz/2020-04/13/c\\_1125846344.htm](http://www.qstheory.cn/zdwz/2020-04/13/c_1125846344.htm).

<sup>26</sup> Lawson and Xu, “SARS in Canada and China”; “Zhedao Yiqing Fangkong de Zhongyao Fangxian Xi Jinping Gaodu Zhongshi.”

<sup>27</sup> 卞克文, “发挥社会治理优势, 确保疫情防控落到实处, [Using Social Governance to Ensure the Success of the Combat against Covid-19],” 求是网 [*Qiushi Net*], 12 March 2020, [http://www.qstheory.cn/lqikan/2020-03/12/c\\_1125701808.htm](http://www.qstheory.cn/lqikan/2020-03/12/c_1125701808.htm).

<sup>28</sup> 李阳, “中央政法委: 进一步发挥基层综治中心和网格员在疫情防控中的作用 [The Central Political and Legal Affairs Commission: The Important Role of Local Governance and Grid Management Staff in the Control of the Covid-19 Pandemic],” 9 February 2020, <http://www.court.gov.cn/zixun-xiangqing-220241.html>.

<sup>29</sup> “Grid Management and Social Control in China,” *Asia Dialogue* (blog), 27 April 2018, <https://theasiadialogue.com/2018/04/27/grid-management-and-social-control-in-china/>.

to align *shequ* functions with expectations from the top. In mid-April 2020, a guideline on *shequ* services, jointly issued by National Health Commission and the Ministry of Civil Affairs, detailed instructions on community control, services, residential participation, and applicable technologies for low, medium, and high risk areas.<sup>30</sup> The success of *shequ* pandemic governance sacrificed front-line community workers and volunteers: several died of the extreme workload and responsibilities,<sup>31</sup> with limited resources. But after the relative and much-publicized success of their role in Covid-19 responses, many urbanites will likely accept and live with the grid management system.

Community tracing through grid management has been greatly enabled by “big data” and cloud technology in collecting, integrating, and controlling much personal information, and in discovering contact networks.<sup>32</sup> Lockdowns, quarantines, and economic shutdowns were effective in stopping the spread of the virus, but they also interrupted the flow of just-in-time global supply chain production. In discussing global supply chain logistics, Deborah Cowen points to “the biological imperative to flow,” by which she means that the just-in-time supply chain system, by analogy to circulation system in biology, must keep material flowing in a wider system for that system to work. By that same analogy, interruption of a flow becomes a threat to the wider system.<sup>33</sup> However, a major policy puzzle has emerged: that of how to allow people mobility for daily life and work, including returning to work, while allowing the authorities to monitor the population to contain the spread of virus. How can the authorities restart the economy in relative safety after the national economic lockdown?

Technology provides a partial solution. Apps using WeChat were downloaded on individual cellphones, with color-coded Quick Response (QR) codes indicating degrees of risk to the wider population.<sup>34</sup> Hangzhou first introduced these apps, the headquarters of the tech giant, Alibaba, which owns WeChat.<sup>35</sup>

<sup>30</sup> “民政部、国家卫生健康委关于印发《新冠肺炎疫情社区防控与服务工作精准化精细化指导方案》的通知 [The Ministry of Civil Affairs and National Health Commission: Notice on Announcing the Measures of the control of Covid-19 Pandemic and Services in Residential Committees],” accessed 20 April 2020, [http://www.gov.cn/zhengce/zhengceku/2020-04/16/content\\_5503261.htm](http://www.gov.cn/zhengce/zhengceku/2020-04/16/content_5503261.htm).

<sup>31</sup> “做好社区宣传员，党员在新冠期间起到模范带头作用 [The Leading Role of CCP Members during the Covid-19 Pandemic],” *China Daily*, 17 February 2020, <https://cn.chinadaily.com.cn/a/202002/17/WS5e4aa0c1a3107bb6b57a04f7.html>; “致敬了不起的她——10名“城乡社区抗疫巾帼先锋”先进事迹 [To the Amazing Her: The Stories of Ten Heroines in the Covid-19 Pandemic],” 新华社, 8 April 2020, <http://www.mca.gov.cn/article/xw/mtbd/202004/20200400026996.shtml>.

<sup>32</sup> 孙柏瑛，于扬铭，“网格化管理模式再审视 [Rethinking Grid Management Model],” *南京社会科学* no. 04 (2015): 65–71.

<sup>33</sup> Deborah Cowen, *The Deadly Life of Logistics: Mapping the Violence of Global Trade* (Minneapolis: University of Minnesota Press, 2014): 49.

<sup>34</sup> See also Li, Phusamruat, Clear, and Damian, Chapter 14, this volume.

<sup>35</sup> Sophia Ankel, “As China Lifts Its Coronavirus Lockdowns, Authorities Are Using a Color-Coded Health System to Dictate Where Citizens Can Go. Here’s How It Works,” *Business Insider*, accessed 14 April 2020, <https://www.businessinsider.com/>

A person's QR colour code derived from answers to a set of questions about travel and health history. Those who lied were blacklisted on the larger social credit system,<sup>36</sup> and lies about travel history were inferred from one's cellphone location service. Color-coded QR thus differentiated population by infection exposure and provided dynamic population management as people travelled locally or further afield. In addition, using its integrated e-governance platform under three big telecom companies (China Telecom, China Mobile, and China Unicom), the central government introduced its "information big data travel card" (通信大数据行程卡) to monitor accurately every individual's travel history over the previous fourteen days. A user opened Alipay (Alibaba's equivalent to PayPal) on WeChat, tapped on "my mini program," and then tapped on the national e-governance platform. There, the user could access the "information big data travel card" by entering their cellphone number and verification code, authorizing platform operators to obtain information on places they had visited over the previous fourteen days. The system showed the places visited or passed through and from this data derived a colour code. If the travel card information was green, one was safe to travel; red meant one was not. This system interfaced with the integrated national platform for health QR code information so that the two sets of information could be cross-checked and verified, preventing concealment or misleading information.<sup>37</sup> The data was collected and controlled by nationally interconnected local police bureaus.

China's authoritarian regime, with its immense capacity, is arguably effective and efficient in responding to public health crises and minimizing fatalities. Surveillance technology for contact tracing enabled movement while limiting infection. But such high-tech systems obviously raise privacy concerns: "Big Brother" is still the dominant Western image of authoritarian regimes.<sup>38</sup> Big data "has been used to highlight the fact that web giants, and government institutions

coronavirus-china-health-software-color-coded-how-it-works-2020-4; "TechChina: Health QR Code Services Expand to Yangtze River Delta," *Xinhua News*, 5 March 2020, [http://www.xinhuanet.com/english/2020-03/05/c\\_138847020.htm](http://www.xinhuanet.com/english/2020-03/05/c_138847020.htm).

<sup>36</sup> For a more nuanced analysis of China's National Social Credit System, see, for example, Nir Kshetri, "China's Social Credit System: Data, Algorithms and Implications," *IT Professional* 22, no. 2 (1 March 2020): 14–18, <https://doi.org/10.1109/MITP.2019.2935662>; Lianrui Jia, "Unpacking China's Social Credit System: Informatization, Regulatory Framework, and Market Dynamics," *Canadian Journal of Communication* 45, no. 1 (21 February 2020), <https://doi.org/10.22230/cjc.2020v45n1a3483>; Bing Song, "The West May Be Wrong About China's Social Credit System," *New Perspectives Quarterly* 36, no. 1 (2019): 33–35, <https://doi.org/10.1111/npqu.12191>.

<sup>37</sup> "工信部通信大数据行程卡服务上线全国一体化政务服务平台 [The Ministry of Industry and Information Technology's 'Information Big Data Travel Card' Integrated with E-governance Platform]," *Xinhua News*, 9 April 2020, [http://www.xinhuanet.com/politics/2020-04/09/c\\_1125832845.htm](http://www.xinhuanet.com/politics/2020-04/09/c_1125832845.htm).

<sup>38</sup> Rachel Botsman, "Big Data Meets Big Brother as China Moves to Rate Its Citizens," *Wired UK*, 21 October 2017, <https://www.wired.co.uk/article/chinese-government-social-credit-score-privacy-invasion>. See also Li, Phusamruat, Clear, and Damian, Chapter 14, this volume.



have started to transform all the different aspects of human experience into data and can now cross-reference large amounts of personal information.”<sup>39</sup> As Barassi argues, “under surveillance capitalism individuals are being profiled simultaneously as consumer and citizen subjects by a complex political economic infrastructure that brings private and public entities together.”<sup>40</sup> The tension between users’ concerns for privacy and the use of platforms such as WeChat, Sina Weibo, Alipay, and Sesame Credit cannot be easily resolved. Chinese citizens are increasingly “datafied” while socializing, shopping, getting loans, and travelling during the pandemic. The question then becomes why people “voluntarily” participate and “willingly” sign the health QR code and information big data travel card: their functionality is based on voluntary participation.

The Big Brother image of a repressive regime, as Chong argues, took “a state-centred/institutional approach that places a single repressive and fearsome ‘antagonist’ in a position of dominance” but “reduce[s] the population to a position of powerlessness and insignificance.”<sup>41</sup> If we revisit the steps an individual takes to receive a “green travel card,” we see the individual becomes in that process what Michel Foucault calls a “subject.” That is, through the process one becomes both an independent agent able to act and care for one’s own health and welfare, and an individual subject to discourses of self-surveillance and self-care and to the logic of surveillance capitalism and an authoritarian will to know and control.<sup>42</sup> Of course, surveillance technology existed long before today’s information technology. Foucault links the state’s “discovery of population, during the eighteenth-century, as an object of scientific investigation” and the state’s desire to know its population’s “birth-rates, death-rates and changes in population” in order to govern.<sup>43</sup> Beyond census data, the Chinese government already gathers large amounts of personal information: personal ID, tax collection forms, customs checks, and public health data. Maoist *danwei*/单位 (workplaces) allowed virtually no privacy or private space. Now, however, surveillance capitalism meets authoritarianism to effectively manage and control political, economic, and social uncertainties. Future studies need to focus on ethnographic studies of personal user experience to transcend the binary of repression/coercion and freedom/empowerment that information technology brings.<sup>44</sup>

<sup>39</sup> Veronica Barassi, “Datafied Citizens in the Age of Coerced Digital Participation,” *Sociological Research Online* 24, no. 3 (2019): 415.

<sup>40</sup> Veronica Barassi, 414.

<sup>41</sup> Gladys Pak Lei Chong, “Cashless China: Securitization of Everyday Life through Alipay’s Social Credit System – Sesame Credit,” *Chinese Journal of Communication* 12, no. 3 (2019): 292.

<sup>42</sup> Michel Foucault and Colin Gordon, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977* (New York: Pantheon Books, 1980), 92–108.

<sup>43</sup> Foucault and Gordon, 124.

<sup>44</sup> See, for examples: Chong, “Cashless China”; Elaine J. Yuan, Miao Feng, and James A. Danowski, “Privacy’ in Semantic Networks on Chinese Social Media: The Case of Sina Weibo,” *Journal of Communication* 63, no. 6 (2013): 1011–1031; Zhen Troy Chen and Ming Cheung, “Privacy

#### 4. Challenges to the Party-State: Socio-Economic Stability and Food Security

After managing the first wave of the pandemic, the Party-state faced the thorny question of how to restart its economy before a vaccine was found while still managing localized outbreaks and asymptomatic carriers. Further, diverse Chinese economic regions contribute to just-in-time supply chains that operate on the assumption that all the chain's links in different regions can function simultaneously; but the disease does not pass through all regions at the same time. The situation is even more incalculable with the many Chinese supply chains integrated with supply chains located abroad.<sup>45</sup>

China's economy was already worsening amid a China-US trade war, heavy local debts, rising labor costs, rising unemployment, and sluggish domestic demand.<sup>46</sup> The China-US trade war dominated other concerns, raising numerous uncertainties and instabilities, anathema to a regime that heavily favors stability. Indeed, the Politburo first raised "six stabilities" as interrelated national policy problems in 2018:<sup>47</sup> stable employment, finance, foreign trade, foreign investment, domestic investment, and economic forecasting. The "six ensures," by contrast, supplement the "six stabilities" in an effort to restart the economy: ensure employment, people's basic livelihood, companies' survival, food and energy security, stability of production and supply chains, and grassroots government and public institutions.<sup>48</sup>

Employment ranks first in both "the six stabilities" and "the six ensures." Thus, unemployment is "deemed to be one of the most politically explosive issues to challenge the Chinese government's overriding priority of social stability."<sup>49</sup> The reported 6.2 per cent unemployment rate in February 2020 was a historic high.<sup>50</sup> Given the sensitivity of unemployment numbers in China, the actual number is probably higher. At the State Council Standing Committee Meeting on 10 March, Premier Li Keqiang said that "so long as employment is stabilized this year, the

Perception and Protection on Chinese Social Media: A Case Study of WeChat," *Ethics and Information Technology* 20, no. 4 (December 2018): 279–289.

<sup>45</sup> 莫言 "关于新冠肺炎疫情下稳就业政策的观察思考 [Thoughts on Stabilizing Employment Policies during the Covid-19 Pandemic]," 中国劳动保障报, 5 March 2020, <http://www.clsn.com/html/node/221649-1.htm>. See also Lansdowne and Lawson, Chapter 30, this volume.

<sup>46</sup> See also Ciuriak and Calvert, Chapter 27, this volume.

<sup>47</sup> "全面做好六稳工作 [Ensuring the Six Stabilities]," 经济日报, 2 August 2019, <https://www.gov.cn>.

<sup>48</sup> "习近平主持中共中央政治局会议 [Xi Jinping Chairs the Politburo Standing Committee of the Communist Party of China]," *Xinhua News*, 17 April 2020, <https://xinhuanet.com>.

<sup>49</sup> Feng Xu, *Looking for Work in Post-Socialist China: Governance, Active Job Seekers and the New Chinese Labour Market* (Florence, United States: Taylor & Francis Group, 2011), 2.

<sup>50</sup> 于海荣, "就业冲击何解 [How to Solve Assault on Employment]," 财新周刊 *Weekly (Online)*, 30 March 2020.

rate of growth, whether a bit higher, or a bit lower, does not matter much.”<sup>51</sup> In his Government Work Report delivered at the National People’s Congress held post-Covid-19, the GDP target was dropped.<sup>52</sup> Flexible employment was hailed as the key to stabilize jobs and to create them.<sup>53</sup> Because of the nature and the scale of the pandemic, labour-intensive industries and service sectors were hardest hit. Service sector jobs accounted for over 46 per cent of China’s total jobs as the economy transitioned toward a service economy.<sup>54</sup> Small and medium-sized enterprises (SMEs) also suffered relatively large losses. According to an Alibaba online survey of over 20,000 SMEs, 73 per cent of those surveyed responded that their production was either interrupted or forced to close; 80 per cent of those surveyed reported daily losses. During the pandemic, their fixed expenditures continued (e.g., social insurance contributions, rents, and interest on loans). As job creators, their survival is a policy priority.<sup>55</sup> Policies supporting them include reduced tax and administrative fees, financial support, and subsidies.<sup>56</sup>

Rural migrants and university graduates are most affected, the former working in labor-intensive industrial and service sectors where demand is reduced, the latter affected by job fair cancellations and postponement of civil service exams.<sup>57</sup> For enterprises to resume production, labour is needed. However, many local governments in migrant-receiving areas have been limiting migrant returns and blocking transportation routes. Consequently, many migrants willing to return, cannot.<sup>58</sup> By 9 March, however, about 80 per cent of migrants who had returned home for Chinese New Year had returned to work; but even so, their hours were diminished, from 46.5 hours per week on average in January to 40.2 hours per week in February.<sup>59</sup> University graduates faced new barriers to employment. Since 2012, graduates had surpassed rural migrants in numbers of job seekers. Faculty members, university administrators, and alumni had been mobilized to find work for their students. SMEs earn one-year one-time subsidies for signing labour contracts of at least one year with university graduates. State-owned enterprises will increase graduate employment in the next two years; public

<sup>51</sup> 于海荣, “就业冲击。”

<sup>52</sup> “China Firm on Achieving Development Goals of 2020, Though Setting No Specific Growth Target,” accessed 28 May 2020, [http://english.www.gov.cn/premier/news/202005/22/content\\_WS5ec72cb3c6d0b3f0e9498312.html](http://english.www.gov.cn/premier/news/202005/22/content_WS5ec72cb3c6d0b3f0e9498312.html).

<sup>53</sup> “李克强对统筹推进疫情防控和稳就业工作电视会议做出重要批示 [Li Keqiang’s Important Comments on the Coordinated Control of Pandemic and Employment Stability],” 30 March 2020, <https://moe.gov.cn>.

<sup>54</sup> 李长安, “疫情冲击下, 如何稳就业 [How to Stabilize Employment during the Pandemic],” 环球网, 13 March 2020, <https://opinion.huanqiu.com>.

<sup>55</sup> 莫言, “关于新冠肺炎疫情下稳就业政策的观察思考。”

<sup>56</sup> “李克强对统筹推进疫情防控和稳就业工作电视会议做出重要批示。”

<sup>57</sup> 李长安, “疫情冲击下, 如何稳就业。”

<sup>58</sup> 于海荣, “就业冲击何解?”

<sup>59</sup> 于海荣, “就业冲击何解?”

institutions raise the percentage of positions reserved for them. Policy-makers now explore job positions in both urban and rural *shequ* and expanded army enlistments for graduates. Beyond job creation, university graduates are encouraged to pursue advanced degrees.<sup>60</sup>

As part of China's reopening, hawkers were allowed to sell in urban areas, stabilizing and ensuring employment and ending past local policies that harassed them in the name of social order and urban image.<sup>61</sup> Employment is also considered key to eradicate rural and regional poverty. Xi had previously set the goal of eradicating rural and regional poverty by 2020, key to the national goal of a "moderately comfortable" living standard. The government still pushes poverty alleviation amid the pandemic. Peasants who could not migrate or remain in their villages get public work as relief.<sup>62</sup>

During SARS in 2003, China's economy was investment driven, at as much as 70 per cent of GDP, while consumption was only 35 per cent of GDP. Consumption has since become the main economic driving force, 57.8 per cent of GDP in 2019.<sup>63</sup> However, a survey of household finance during the first three months of 2020 found that people were saving more and spending less.<sup>64</sup> To stimulate domestic consumption, Shanghai designated May "shopping month."<sup>65</sup> Government leaders publicly shopped and ate at restaurants to show that it was safe to do so.<sup>66</sup> Digital consumer coupons, using Alipay as their platform, started in Hangzhou. They proved effective in boosting consumer spending.<sup>67</sup> However, a Central Bank survey showed increased intentions to save rather than spend, due to job insecurity; this in turn was likely to dampen housing demand.<sup>68</sup>

<sup>60</sup> 于海荣“就业冲击何解”

<sup>61</sup> 岳德亮, “浙江提出合理设定流动摊贩场所鼓励灵活就业 [Zhejiang Province to Set Up Space for Street Vendors to Encourage Creative Ways of Flexible Employment],” 17 May 2020, <https://chinanews.com>; Zhang Xiaowei and John Pratt, “Are Street-Level Bureaucrats in China Hardnosed Cops or Consultants? An Institutional Account of Policing Behavior in Autocracy,” *Journal of Contemporary China* 28, no. 116 (2019): 232–244.

<sup>62</sup> “Highlights of Xi's Remarks on Securing a Decisive Victory in Poverty Alleviation despite the Epidemic,” *Xinhua News*, 7 March 2020, [http://www.xinhuanet.com/english/2020-03/07/c\\_138851140.htm](http://www.xinhuanet.com/english/2020-03/07/c_138851140.htm); “Poverty Alleviation in China: A Must-Win Battle despite COVID-19 Outbreak,” 5 April 2020, <http://www.ecns.cn/news/economy/2020-04-15/detail-ifzviiqq6927503.shtml>.

<sup>63</sup> 莫言, “关于新冠肺炎疫情下稳就业政策的观察思考”

<sup>64</sup> 谭浩俊, “一季度储蓄增加很正常, 激活消费需多管齐下 [It Is Normal for the First Quarter's Saving to Increase and We Need Multiple Methods to Stimulate Consumption],” *National Business Daily*, 21 April 2020, <https://nbd.com.cn>.

<sup>65</sup> “上海开启五五购物节日日有活动, 周周有亮点 [Shanghai Starts Double Five Shopping Festival to Stimulate Consumption],” 27 April 2020, <https://news.cctv.com>.

<sup>66</sup> “多地领导干部带头”摘口罩”下馆子”传递出什么信号? [What Is the Message behind the Fact that Political Leaders across China Are Taking Off Their Masks and Going to Restaurants?],” 22 March 2020, <https://politics.people.com.cn>.

<sup>67</sup> 财经, “红包雨: 五十城发消费券 [The Rain of Red Pocket Money! Coupons Offered in 50 Cities],” accessed 15 April 2020, <http://economy.caijing.com.cn/20200409/4654792.shtml>.

<sup>68</sup> 陈月石, “央行调查: 一季度倾向更多消费的居民占比下降六个百分点 [The Percentage of Residents who Tend to 'Spend More Money' Decreased Six Per Cent during the First Quarter],” *The Paper*, 28 April 2020, <https://thepaper.cn>.

Among the few winners from the pandemic were giant tech companies such as Alibaba and Tencent and delivery companies such as Meituan. Alibaba developed its own ecosystem,<sup>69</sup> whose model the Chinese government supports in its investment in “new infrastructure.” Such information networks are identified as the top priority for this push, a purported economic multiplier for productivity in many other industries.<sup>70</sup> Policy-makers deem integration of the internet, big data, and artificial intelligence with the real economy—“which includes the adoption of information technologies across various sectors”<sup>71</sup>—essential for China’s new economy. “Made in China 2025” is a master plan “to transform its vast goods-producing industries from predominantly low-cost export production to intelligent manufacturing.”<sup>72</sup> This is a key battle ground in the US-China trade war. However, emerging empirical studies on Taobao village, owned by Alibaba, exhibits “a recombination of sophisticated digital distribution platforms with mostly manual low-cost labour.”<sup>73</sup> Luthje Boy goes on to say that China’s historic reliance on cheap labour fits such a production regime particularly well.<sup>74</sup>

A stable and sufficient food supply is also essential to political, social, and economic stability for all countries, rich or poor. China, in particular, retains scars from the famine induced by the Great Leap Forward (1958–1962), during which tens of millions starved.<sup>75</sup> Food security has since been a critical legitimacy issue for China’s rulers. Coronavirus-related transportation and logistics disruptions broke supply chains, and farmers struggled to get their produce to market. Many vegetables and fruits remained unpicked in the field.<sup>76</sup> Meanwhile, food supply chain disruptions also left farmers struggling to grow their crops and feed their livestock for want of fertilizer and soybean feed.<sup>77</sup> Movement

<sup>69</sup> “Alibaba Eco-System in Action,” accessed 17 May 2020, <https://www.alizila.com/ecosystem-in-action/>.

<sup>70</sup> “李克强主持召开国务院常务会议。听取2019年全国两会建议提案办理情况汇报 [Li Keqiang Chairs State Council Executive Meeting and Listens to the 2019 Two Sessions’ Proposals],” 28 April 2020, <https://www.gov.cn>.

<sup>71</sup> Luthje Boy, “Platform Capitalism ‘Made in China’?: Intelligent Manufacturing, Taobao Villages and the Restructuring of Work,” *Science, Technology & Society* 24, no. 2 (2019): 200.

<sup>72</sup> Luthje Boy, 200.

<sup>73</sup> Luthje Boy, 214.

<sup>74</sup> Luthje Boy, 214.

<sup>75</sup> Jessie Yeung CNN, “The Coronavirus Pandemic Could Threaten Global Food Supply, UN Warns,” CNN, accessed 24 April 2020, <https://www.cnn.com/2020/04/10/asia/coronavirus-food-supply-asia-intl-hnk/index.html>.

<sup>76</sup> “蔬菜滞销只能烂在地里？菜农别慌，一大波“保菜”政策、举措来了 [Vegetables Left Rotten in the Field? Don’t Worry. Now We Got Good Policies],” *Sina*, 18 February 2020, [https://k.sina.com.cn/article\\_3680833611\\_db65104b00100hodd.html](https://k.sina.com.cn/article_3680833611_db65104b00100hodd.html).

<sup>77</sup> “As the Coronavirus Disrupts Food Supply Chains, Who Will Feed China?,” *South China Morning Post*, accessed 9 May 2020, <https://www.scmp.com/week-asia/opinion/article/3079365/coronavirus-disrupts-food-supply-chains-who-will-feed-china>.

restrictions during planting season in many provinces also threatened the year's production.<sup>78</sup>

Since these problems could threaten food security, the leadership issued several directives urging effective implementation of the “vegetable basket program major responsibility mechanism.”<sup>79</sup> This program was introduced in 1988 to guarantee the provisioning and affordability of non-grain food, particularly vegetables, milk, eggs, seafood, and meat.<sup>80</sup> It emphasizes local governments' responsibility for production, logistics and distribution, and price monitoring. Local governments at various levels set up “green channels” for transporting fresh produce.<sup>81</sup> To deliver food to consumers during the outbreak, e-commerce and delivery companies have been central in urban logistics, providing contactless delivery to people's doorsteps or to existing delivery lockers in housing complexes.<sup>82</sup> Meanwhile, during spring plowing, authorities encouraged farming activities in green and yellow zones under moderate protective measures.<sup>83</sup> A Guidance on Spring Plowing announced in early March helped local governments ensure that farmers resumed field labour.<sup>84</sup> On 26 March, the Ministry of Agriculture and Rural Affairs and the Ministry of Human Resources and Social Security jointly directed returning migrant workers stuck in their villages to participate in agricultural production.<sup>85</sup>

Back in October 2019, Zhang Wufeng of the National Development and Reform Commission's CCP leadership group had suggested that “we must hold

<sup>78</sup> “The Potential Impact of COVID-19 on Food Security in China and Globally,” *China.org.cn*, accessed 9 May 2020, <https://www.prnewswire.com/news-releases/the-potential-impact-of-covid-19-on-food-security-in-china-and-globally-301025420.html>.

<sup>79</sup> “农业农村部办公厅交通运输部办公厅公安部办公厅关于确保“菜篮子”产品和农业生产资料正常流通秩序的紧急通知 [The Urgent Notice on Effective Implementation of the Vegetable Basket Program Major Responsibility Mechanism],” accessed 24 April 2020, [http://www.gov.cn/zhengce/zhengceku/2020-01/30/content\\_5473192.htm](http://www.gov.cn/zhengce/zhengceku/2020-01/30/content_5473192.htm).

<sup>80</sup> Zhenzhong Si, “Lessons from China: Ensuring No One Goes Hungry during Coronavirus Lockdowns,” *The Conversation*, accessed 9 May 2020, <http://theconversation.com/lessons-from-china-ensuring-no-one-goes-hungry-during-coronavirus-lockdowns-135781>.

<sup>81</sup> Wei Song, “Preventing Global Food Security Crisis under COVID-19 Emergency,” *Chinadaily.Com.Cn*, accessed 9 May 2020, <https://www.chinadaily.com.cn/a/202003/06/WS5e61b922a31012821727ce20.html>.

<sup>82</sup> Si, “Lessons from China.”

<sup>83</sup> 邓志慧、宋子节, “疫情冲击全球粮食安全, 中国何以临危不惧? [Why Is China not Afraid of Global Food Security Crisis under the Covid-19 Pandemic],” 11 April 2020, <http://politics.people.com.cn/n1/2020/0411/c1001-31670034.html>.

<sup>84</sup> “中央应对新型冠状病毒感染肺炎疫情工作领导小组关于印发当前春耕生产工作指南的通知 [Notice on the Announcement of the Guidance on Spring Plowing],” *Xinhua News*, 3 March 2020, [http://www.xinhuanet.com/politics/2020-03/03/c\\_1125657876.htm](http://www.xinhuanet.com/politics/2020-03/03/c_1125657876.htm).

<sup>85</sup> “农业农村部办公厅人力资源社会保障部办公厅关于印发《扩大返乡留乡农民工就地就近就业规模实施方案》的通知 [The Ministry of Agriculture and Rural Affairs and the Ministry of Human Resources and Social Security: Notice on Encouraging Returning Migrant Workers Stuck in their Villages to Find Work Nearby],” 26 March 2020, [http://www.gov.cn/zhengce/zhengceku/2020-03/30/content\\_5497102.htm](http://www.gov.cn/zhengce/zhengceku/2020-03/30/content_5497102.htm).

the rice bowl firmly in our hands, and fill it with even more Chinese food.”<sup>86</sup> This statement re-appeared at the press conference of the Joint Prevention and Control Mechanism of the State Council in April 2020 to reassure citizens about post-pandemic food security. The pandemic allowed China to revisit food security after decades of urbanization and industrialization, which had involved mass conversion of arable land, pollution, and soil depletion amidst climate change and an aging agricultural workforce.

While these measures partly ensured food production and distribution during lockdown, China, as the world’s largest food consumer and importer, is vulnerable to disruptions in the global logistics networks and food supply chain. Official data show that the country has relied on domestic rice and wheat to feed its people;<sup>87</sup> however, China relies heavily on imported soybeans, widely used in animal protein production. It produces less than 20 per cent of its own soybeans and depends on Brazil, the United States, and Argentina for the rest.<sup>88</sup> Thus, with a prolonged disruption in the international soybean supply chain, Chinese farmers would struggle to feed their livestock and supply the domestic demand for meat, further increasing prices. China’s growing demand for soybeans also reflects changes in people’s appetites—“unlike the older generations who only had to worry about how to feed themselves, today’s Chinese want to eat more like their affluent counterparts in the developed world.”<sup>89</sup> The CCP’s legitimacy will suffer if it can only ensure rice and wheat supplies.

## 5. Conclusion: China’s Role in the World

China’s initial mishandling of the Covid-19 outbreak, primarily at local levels, damaged the world’s trust. China usually presents itself abroad as a friendly neighbour and an active, responsible great power rather than a rule-breaker or a challenger.<sup>90</sup> During the Covid-19 pandemic, however, China sought world

<sup>86</sup> “China ‘Must Ensure Its Own Food Security,’ but Soybean Imports to Continue,” *South China Morning Post*, 14 October 2019, <https://www.scmp.com/news/china/society/article/3032889/china-must-ensure-its-own-food-security-soybean-imports-continue>.

<sup>87</sup> “Coronavirus May Cause Global Food Shortages as Panic Buying and Export Curbs Hit Supply,” *South China Morning Post*, accessed 9 May 2020, <https://www.scmp.com/economy/global-economy/article/3077621/coronavirus-may-cause-food-shortages-panic-buying-and-export>.

<sup>88</sup> “Coronavirus May Cause Global Food Shortages as Panic Buying and Export Curbs Hit.”

<sup>89</sup> “As the Coronavirus Disrupts Food Supply Chains, Who Will Feed China?”

<sup>90</sup> Yanzhong Huang, “Pursuing Health as Foreign Policy: The Case of China Symposium,” *Indiana Journal of Global Legal Studies* 17, no. 1 (2010): 112; Lai-Ha Chan, *China Engages Global Health Governance: Responsible Stakeholder or System-Transformer?*, 1st ed., Palgrave Series on Asian Governance (New York: Palgrave Macmillan, 2011), 2, <http://www.palgraveconnect.com/doi/10.1057/9780230116245>.

leadership through global propaganda campaigns and “mask diplomacy.”<sup>91</sup> The CCP learned from the SARS pandemic that such outbreaks seriously affect stability, prosperity, and security both domestically and abroad.<sup>92</sup> The Party’s anxieties about China’s international image stem not only from global pressure but also from domestic concerns.

Since Xi took power, state propaganda has promoted the concept of The China Dream to reinforce the CCP’s legitimacy. It presents the Party as serving citizens’ collective aspirations.<sup>93</sup> The China Dream, to Xi, aims at improving living standards and ensuring the happiness of individuals by revitalizing the Chinese nation on a grand scale.<sup>94</sup> At a five-year Party congress in 2017, Xi announced that his goal was to steer his country to global leadership in terms of international influence by the mid-twenty-first century.<sup>95</sup> China’s global influence and international image are critical to the CCP’s legitimacy.

As “keeping up a positive image for the Chinese public has long been an important part of maintaining its legitimacy,”<sup>96</sup> China worked hard to communicate to its citizens that other countries should copy its approach to the Covid-19 pandemic.<sup>97</sup> It sent medical supplies and medical teams to other countries, depicting itself as the world’s pandemic leader and saviour.<sup>98</sup> These strategies, however, were unlikely to make China the leader of the post-Covid-19 world. The global community lost some trust due to its initial handling and lack of transparency, threatening its global standing.<sup>99</sup>

Nevertheless, the global propaganda campaign, as well as China’s tough reaction to President Trump’s attacks, were effective in managing domestic pressures; these responses likely ensured the CCP’s political survival as the CCP centred its official ideology on nationalism. The CCP historically prioritized domestic considerations and the preservation of its legitimacy over international

<sup>91</sup> “China Is Losing the World’s Trust Following Its Cover-up of Covid-19,” *South China Morning Post*, 13 April 2020, <https://www.scmp.com/comment/opinion/article/3079417/how-china-losing-worlds-trust-following-its-cover-coronavirus>.

<sup>92</sup> Huang, “Pursuing Health as Foreign Policy,” 107.

<sup>93</sup> Gil Hizi, “Speaking the China Dream: Self-Realization and Nationalism in China’s Public-Speaking Shows,” *Continuum* 33, no. 1 (2 January 2019): 39–40, <https://doi.org/10.1080/10304312.2018.1536967>.

<sup>94</sup> Hizi, 39.

<sup>95</sup> “China’s Post-Covid Propaganda Push,” *The Economist*, accessed 9 May 2020, <https://www.economist.com/china/2020/04/16/chinas-post-covid-propaganda-push?fsrc=scn/tw/te/bl/ed/thankingbigbrotherchinaspostcovidpropagandapushchina>.

<sup>96</sup> Li Yuan, “With Selective Coronavirus Coverage, China Builds a Culture of Hate,” *The New York Times*, 22 April 2020, <https://www.nytimes.com/2020/04/22/business/china-coronavirus-propaganda.html>.

<sup>97</sup> Li Yuan, “With Selective Coronavirus Coverage, China Builds a Culture of Hate.”

<sup>98</sup> “China’s Post-Covid Propaganda Push.”

<sup>99</sup> “China Unlikely to Emerge as Leader of Post-Coronavirus World,” *Nikkei Asian Review*, accessed 9 May 2020, <https://asia.nikkei.com/Spotlight/Comment/China-unlikely-to-emerge-as-leader-of-post-coronavirus-world>.



considerations.<sup>100</sup> However, in the China-US blame game over Covid-19, CCP leaders depicted themselves as nationalist superheroes, abandoning China's previously mild-mannered international demeanor.

China's emergency responses reflected a mixture of mass mobilization of political, economic, and social resources, as in war times; post-Mao modernizing efforts at legal, regulatory, and institutional governance; and Foucauldian modes of neoliberal governance, steering individual citizens to exercise self-surveillance and self-care. The Chinese Party-state has already started a propaganda campaign, celebrating the advantages of a Chinese political system that successfully contained Covid-19. Authoritarianism meeting surveillance capitalism, as used during the pandemic, risks becoming "normalized" after the pandemic passes into history. However, China faced numerous challenges to its governance and state capacities, in resuming its economy, getting people employed, and ensuring people's livelihood in an international context where the US-China relationship is fraught with tension. China's global standing took a hit from its initial handling of the outbreak. Global supply chains risked being re-drawn. The bases for the CCP legitimacy are always shifting and unstable in the light of changing preconditions of state control, the smooth operation of the supply chain, and the balance of power in international diplomacy. The point is that the Chinese Party-state has so far proven both willing and able to make such adjustments in order to stay in power.

<sup>100</sup> Susan L. Shirk, *China: Fragile Superpower: How China's Internal Politics Could Derail Its Peaceful Rise* (Oxford University Press, 2007), 8–10.

# Taiwan: Democracy, Technology, and Civil Society

*Wen-Chen Chang\* and Chun-Yuan Lin\*\**

## 1. Introduction

Taiwan has demonstrated to the world its strength and success in combatting the spread of Covid-19 despite decades of exclusion from the World Health Organization (WHO). Given Taiwan's geographical proximity and close economic ties with China, the initial epicentre of the coronavirus, it was estimated to be hit hard by the global pandemic. Yet, defying these predictions, Taiwan maintained a considerably low number of confirmed cases and exhibited no sign of community spread.<sup>1</sup>

Since the first confirmed case on 21 January 2020, a returning Taiwanese woman who had long worked in China,<sup>2</sup> there were, by late May 2020, only 441 confirmed cases with 7 deaths.<sup>3</sup> Of those confirmed cases, 80 per cent (350/441) were imported cases involving returning Taiwanese nationals and inbound foreign visitors. The first wave of imported cases came in February with Taiwanese nationals returning from China. The second wave coincided with the worsened situation in Europe and the United States in March; similar to the first wave, most cases were Taiwanese nationals returning from those epicentres of the coronavirus pandemic.

\* Dean and Professor, School of Law, National Chao Tung University and Professor, College of Law, National Taiwan University.

\*\* Associate Professor, School of Law, Department of Financial and Economic Law, Chung Yuan Christian University.

<sup>1</sup> Maurizio Di Paolo Emilio, "Covid-19 and The Success Story of Taiwan," *EE Times*, 13 March 2020, <https://perma.cc/DE9E-NC36>; Laignee Barron, "What We Can Learn From Singapore, Taiwan, and Hong Kong About Handling Coronavirus," *Time*, 13 March 2020, <https://perma.cc/T8G2-R4EF>.

<sup>2</sup> "我國藉由登機檢疫即時發現首例中國大陸武漢移入之嚴重特殊傳染性肺炎個案 指揮中心提升中國大陸武漢之旅遊疫情建議至第三級警告(Warning) [Taiwan found the first Covid-19 case of a person from Wuhan, China through on-board testing. The travel warning on Wuhan, China was raised to the third level]," *Ministry of Health and Welfare*, 21 January 2020, <https://perma.cc/2DRB-MQNN> [title translated to English].

<sup>3</sup> Cases were reported as of 27 May 2020. See <https://perma.cc/CL8W-RW4N>.

With 23 million people living on an island about the size of Switzerland, Taiwan's success in controlling the coronavirus spread seems miraculous. This success has not come without a price. Taiwan has had hard lessons from past tragic experiences with the loss of medical personnel and individual lives, particularly during the Severe Acute Respiratory Syndrome (SARS) outbreak in 2003.<sup>4</sup> Built on the past and ongoing experiences, Taiwan has established a legal framework and institutional infrastructure for epidemic control, which enables effective regulatory measures with a mechanism to balance human rights and individual freedoms.<sup>5</sup> In addition to its legal framework, Taiwan's universal healthcare system, advanced technology sector, robust civil society, and, most importantly, transparent democratic governance, all contributed to the miraculous success of its fight against Covid-19.

## 2. Legal and Regulatory Responses

Taiwan confronted the new coronavirus with early detection and precaution. As early as 30 December 2019, Taiwan Centers for Disease Control (CDC) undertook inspections of inbound passengers travelling from Wuhan, China.<sup>6</sup> The following day, it sent a request to China's authority for information about the new coronavirus and reported to the WHO about suspicious cases in China.<sup>7</sup> Having heard from neither, the government deployed early measures under its existing legal mechanism for controlling communicable diseases.

### A. Legal Framework: Constitutional Interpretation, the CDC Act, and the Special Covid-19 Act

The primary legal mechanism for combatting epidemics such as Covid-19 is the *Communicable Disease Control Act* (CDC Act). Substantially amended after the SARS outbreak, the CDC Act establishes a centralized command system with a clear division of power between the central and local governments. The central government, represented by the Central Epidemic Command Center

<sup>4</sup> A few other Asian jurisdictions, including China, Hong Kong, and Vietnam, also had valuable lessons learned from the 2003 SARS outbreak, which helped substantially on their efforts in combatting Covid-19. See respective chapters of this volume.

<sup>5</sup> See also Tsung-Ling Lee, "Legal preparedness as part of Covid-19 response: the first 100 days in Taiwan," *BMJ Global Health* 5, no. 5 (Spring 2020), <https://perma.cc/8TY5-B9HE>; Timothy Sly, "Taiwan's coronavirus protocol might be seen as 'extreme' to Canadians, but it works," *Maclean's*, 7 April 2020, <https://perma.cc/6A9V-XQS4>.

<sup>6</sup> Ministry of Health and Welfare, 31 December 2019, <https://perma.cc/A2XM-BG2Q>.

<sup>7</sup> Taiwan Centers for Disease Control, 11 April 2020, <https://perma.cc/E9M4-NZSR>.

(Central Command, or CECC), is responsible for setting standards and providing regulatory measures, including inspection, contact tracing, quarantine, isolation, inbound and outbound travel restrictions, requisition, expropriation, and compensation.<sup>8</sup> Local governments are tasked primarily with case-by-case enforcement.

Three key provisions in the CDC Act provide for balancing protection of human rights and individual freedoms. Article 10 of the CDC Act prohibits those in the public or private sector who have access to information related to patients or suspected patients with communicable disease such as names, medical record, and medical history from disclosing such information. Fines can be imposed in case of violation.<sup>9</sup> Article 11 of the CDC Act further guarantees that the dignity and legal rights of patients with communicable diseases, medical personnel in care of such patients, patients under isolation care, home-based or institution-based quarantine, as well as their families must be respected and protected without any discrimination. Article 12 of the CDC Act further obligates public and private persons and institutions not to deny patients with communicable diseases their rights to education, employment, nursing care, or housing or to provide any other unfair treatment.<sup>10</sup>

These rights-protecting provisions were introduced as part of a substantial revision of the CDC Act triggered by a Constitutional Court decision following the SARS outbreak.<sup>11</sup> In *JY Interpretation No 690*, the Constitutional Court considered a challenge to the allegedly over-restrictive mandatory quarantine broadly delegated by the CDC Act. In its 2011 decision, the Constitutional Court upheld the constitutionality of physical examination, mandatory quarantines, and all other similar measures in the CDC Act, reasoning that these measures did not violate the principle of legal clarity, the principle of proportionality, or due process of law guaranteed in Articles 8 and 23 of the Constitution. Nevertheless, mindful of restrictive nature of those mandatory measures, the Constitutional Court instructed the government to set a time limit for mandatory isolations or quarantines and provide prompt remedies with an adequate compensation regime. The CDC Act was substantially revised accordingly, and Article 53 was stipulated to authorize compensation for isolated or quarantined individuals.

In early February 2020, Taiwan saw the inauguration of a new legislature. With a fresh mandate for another four years, the new legislators responded quickly to

<sup>8</sup> Chuanranbing Fanjih Fa, [*Communicable Disease Control Act*], amended 19 June 2019, arts. 36, 37, 38, 44, 45, 48, 58, <https://perma.cc/NV4N-KMCN>.

<sup>9</sup> Fines from TWD 90,000 up to TWD 450,000 can be imposed in case of violation, according to Article 64 of the CDC Act.

<sup>10</sup> In case of violating Articles 11 and 12, fines from TWD 10,000 up to TWD 150,000 can be imposed, according to Article 69 of the CDC Act.

<sup>11</sup> *JY Interpretation No. 690*, 30 September 2011, Constitutional Court, Judicial Yuan, ROC, <https://perma.cc/7X76-Y6A7>.

Covid-19, enacting a special act to provide for even more generous relief and compensation as a supplement to the CDC Act. On 25 February, the *Special Act for Prevention, Relief, and Revitalization Measures for Severe Pneumonia with Novel Pathogens* (Special Covid-19 Act) was promulgated. Most provisions were made to grant powers and stipulate procedures for government expenditure on relief, compensation, and economic stimulus. A budget of TWD 60 billion was authorized. A limited period of the Special Covid-19 Act was stipulated: from 15 January 2020 to 30 June 2021. Any further extension had to be granted by legislative resolution.<sup>12</sup>

Two provisions of the Special Covid-19 Act, however, caused serious concern.<sup>13</sup> The first was Article 7, which granted the Central Command the power to implement necessary measures for disease prevention and control. Unlike well stipulated provisions in the CDC Act, this provision grants an expansive power subject only to the requirement of necessity. This blanket authorization prompted the criticism that Taiwan's Covid-19 legal response mirrored dictatorial or authoritarian regimes.<sup>14</sup> As a supplement to the CDC Act, this provision must be interpreted and applied in a supplementary manner, in accordance with the CDC Act. Only with this strict and narrow understanding can this provision be saved.<sup>15</sup> Perhaps wary of criticism, the Central Command has seldom referred to this provision except in the issuance of a travel ban on all medical personnel at the end of February 2020.<sup>16</sup>

The other controversial provision was Article 8, in which the Central Command was given the power to collect or release personal data if an individual violates quarantine or isolation order. This was deemed an exception to Articles 10 and 11 of the CDC Act, under which those having access to personal data were prohibited from disclose, let alone further releasing that information. The government justified this provision by pointing to its narrow application to those violations of quarantine or isolation orders. Still, facing mounting pressures from human rights groups and lawyers, a clause was eventually added requiring the government to delete the personal data at the end of the pandemic according to the Personal Data Protection Act.<sup>17</sup>

<sup>12</sup> Art. 11 of the Special Covid-19 Act, <https://perma.cc/TL94-BJ8N>.

<sup>13</sup> Ching-Fu Lin, Chien-Huei Wu, and Chuan-Feng Wu, "Reimagining the Administrative State in Times of Global Health Crisis: An Anatomy of Taiwan's Regulatory Actions in Response to the COVID-19 Pandemic," *European Journal of Risk Regulation* 11 (Spring 2020): 1–21, <https://perma.cc/DU4Y-7J7V>.

<sup>14</sup> Ming-Sung Kuo, "A Liberal Darling or an Inadvertent Hand to Dictators: Open-Ended Lawmaking and Taiwan's Legal Response to the Covid Pandemic," *Blog of the International Journal of Constitutional Law*, 30 April 2020, <https://perma.cc/V833-5DQS>.

<sup>15</sup> See also Min-Hsin Lin, "疫情下的法學爭議：嚴重特殊傳染性肺炎防治及紓困振興特別條例第7條 [A controversial legal issue in the pandemic: Article 7 of the Special Covid-19 Act]," Facebook, 8 May 2020, <https://perma.cc/S48W-RE69> [title translated to English].

<sup>16</sup> Executive Yuan, 27 February 2020, <https://perma.cc/BR2B-7XZT>.

<sup>17</sup> Art. 8, cl. 3 of the Special Covid-19 Act.

To further ease concerns with rule of law or human rights encroachment, Article 18 of the Special Covid-19 Act requires the government to issue a written report three months after promulgation and the premier to report to the legislature in person about the pandemic situation and special budget expenditure after six months. A dedicated government website to provide updated information on relevant laws, regulations, or orders must be provided by the Central Command and other competent agencies.<sup>18</sup>

## B. Regulatory Responses

Unlike other countries suddenly caught into community spread of Covid-19 crippling their medical facilities, Taiwan was quite successful in controlling imported infection and preventing coronavirus spread. There was no need to impose drastic measures such as massive testing, shelter-in-place, lockdowns, or declaring emergency decrees. As mentioned earlier, the key to Taiwan's success was the early detection of coronavirus threats from China. Covid-19 regulatory responses were undertaken step by step, first to reduce imported infection and prevent community spread, then to strengthen medical resilience and reduce social vulnerability, and finally to provide for compensations and bailouts.

### i. Incremental Measures to Reduce Imported Infection

As early as 15 January 2020, Taiwan officially declared Covid-19 a Category 5 Communicable Disease under the CDC Act, and the Central Command was established on 20 January to coordinate inter-agency efforts and provide for regulatory measures. Under the authorization of Articles 58 and 59 of the CDC Act, the Central Command introduced regulatory measures, including border controls, contact tracing, and isolations and quarantines to minimize imported cases. With the increasing risk of community spread, further restrictive measures were imposed, including compulsory mask-wearing, targeted facility closures, and social distancing in accordance with Articles 36, 37, and 48 of the CDC Act. Together, these measures provided multiple layers to reduce the risk of coronavirus spread.<sup>19</sup>

Under Article 58 of the CDC Act, inspections of inbound travellers from Wuhan, China, had been imposed as early as 30 December 2019.<sup>20</sup> However, on 26 January 2020, all inbound travellers from the Hubei province of China were banned from entering Taiwan,<sup>21</sup> and less than two weeks later, on 6 February, all

<sup>18</sup> Taiwan Centers of Disease Control, <https://perma.cc/JDA8-FQHS>.

<sup>19</sup> See also Sly, "Taiwan's coronavirus protocol."

<sup>20</sup> Ministry of Health and Welfare, 31 December 2019, <https://perma.cc/99P7-6DP5>.

<sup>21</sup> Taiwan Centers for Disease Control, 26 January 2020, <https://perma.cc/9HUB-GEKA>.

inbound travellers from China were banned.<sup>22</sup> With the sharp increase of confirmed cases in other countries, on 22 March, all inbound foreign travellers, including transit passengers, were banned from entering Taiwan.<sup>23</sup>

Meanwhile, fourteen-day quarantines were imposed on those entering Taiwan from the countries listed on a Travel Notice. Being the epicentre of the pandemic, China was the first on the list, followed by South Korea, Singapore, Iran, and Italy. As the global situation worsened, beginning 19 March 2020, all inbound foreigners were banned from entering Taiwan, and Taiwanese nationals were imposed with fourteen-day quarantines when coming back.<sup>24</sup> Those having contact with Covid-19 patients were required to self-isolate at home or in designated places. Individuals under quarantine and isolation orders were required to report their health status regularly to the supervisory office. After completing a fourteen-day isolation or quarantine, they could apply for compensation.

As the risk of community spread increased in early March, further restrictions were issued under Article 37 of the CDC Act. On 5 March, large-scale public gatherings were banned and social distancing measures were imposed. After a senior high school student was confirmed with a Covid-19 infection, the government issued an overseas travel ban on all teachers and students at the high school level and below. Beginning on 1 April, all passengers were required to wear a face mask on public transportation. On 9 April, the Central Command issued a temporary ban on night clubs and ballrooms after an infected hostess continued to serve customers. The number of visitors to temples, night markets, and tourist hotspots was also limited. These restrictive measures reduced imported Covid-19 cases and prevented community spread. By 25 May, Taiwan had seen more than forty days without any local cases, and the restrictive measures were gradually lessened.

## ii. Strengthening Medical Resilience and Reducing Social Vulnerability

After the SARS experience, Taiwan learned that successful pandemic control relies heavily on the resilience of medical system and the general public. In dealing with Covid-19, Taiwan therefore prioritized strengthening medical resilience on the one hand and reducing social vulnerability on the other. From the start of 2020, all front-line doctors at medical centres received an official alert to be attentive when encountering patients with suspect symptoms. Under the instruction of the National Health Insurance System (NHI), all hospitals quickly imposed compulsory temperature checks and a mask-wearing policy for anyone entering hospitals.

<sup>22</sup> Taiwan Centers for Disease Control, 5 February 2020, <https://perma.cc/D963-BKG6>.

<sup>23</sup> Taiwan Centers for Disease Control, 11 February 2020, <https://perma.cc/5U2J-6B7J>.

<sup>24</sup> Taiwan Centers for Disease Control, 18 March 2020, <https://perma.cc/XY54-G9G7>.

A bold step was undertaken in early February to protect medical personnel and reduce risk of infection in hospitals and medical facilities. That was the amalgamation of the two databases: integrating the immigration database that has the information of inbound and outbound travellers with the NHI database. This allowed medical personnel to be instantly informed of the travel histories of their patients. In response to mounting criticism of these privacy intrusions, the government justified these measures with reference to Articles 31 and 32 of the CDC Act, which require medical personnel to ask patients for their travel histories and personal contacts and patients to fully inform them. To mitigate privacy concerns, a compromise was made: doctors would be notified by the integrated database if patients had travel history in the prior fourteen days. Once a coronavirus infection was confirmed, it would be easy to trace contacts and impose quarantine orders if necessary. This measure proved quite effective in protecting medical personnel and substantially reducing the risk of infection in medical facilities and hospitals.<sup>25</sup>

As previously discussed, the Central Command undertook a precautionary measure to prevent a shortage of medical personnel by banning all doctors and medical care providers from travelling overseas. This was done by invoking an expansive power conferred by the Special Covid-19 Act. To ease tensions, on 14 April, the Ministry of Health and Welfare relied on Article 2 of the Special Covid-19 Act to provide medical personnel with monetary incentives covering their daily stipends during the pandemic and all the losses arising from the overseas travel ban.<sup>26</sup>

The government also took precautionary measures to ensure a sustainable supply of medical resources for general public. Under Article 54 of the CDC Act, a few key mask manufacturers were ordered to collaborate on mass production. From 6 February, a real-name distribution system of face masks was put in place to ensure an adequate and sustainable supply for everyone.<sup>27</sup> On the basis of national health insurance systems, these face masks were sold at an affordable price—one face mask for TWD 5—at authorized pharmacies, local health centres, and convenience stores. All persons, including foreigners with an identification card or visa, could get masks. The introduction of

<sup>25</sup> Until 31 May, there were only three nurses infected and no signs of internal outbreak within medical centres or hospitals. *See also* Taiwan Centers for Disease Control, <https://www.cdc.gov.tw/En/Bulletin/Detail/pOahsDWblKw6KMVDsPed9Q?typeid=158>.

<sup>26</sup> 執行嚴重特殊傳染性肺炎醫療照護之醫事人員津貼申請作業須知 [Instruction on subsidy rules for medical personnel providing medical care service against Covid-19], amended 12 May 2020, <https://perma.cc/MQ5R-5A3W> [title translated to English].

<sup>27</sup> Under this system, individuals purchase face masks by using their National Health Insurance Cards to register their name and quantity of masks purchased in order to ensure fair distribution. Taiwan Centers for Disease Control, 6 February 2020, <https://perma.cc/939D-ZUC2>.



e-governance into the system by the Digital Minister leveled up the system to increase its fairness and efficiency in the distribution of face masks and other medical supplies.<sup>28</sup> Owing to this system, while other countries were facing a severe shortage of masks and other medical equipment, Taiwan's relevant supplies increased at a steady pace.

### iii. Compensations and Bailouts

The pandemic struck individuals and industries alike. A government plan for relief and revitalizing the economy was crucial to the resilience of Taiwan. As previously mentioned, the Special Covid-19 Act was also implemented for this purpose. Article 19 of this act provides a broad mandate for the government to provide subsidies, compensation, and revitalization funds for industries in dire need. Based on this authorization, the Regulations Governing Compensation for Periods of Isolation and Quarantine for COVID-19 were promulgated on 10 March 2020, allowing all requisitioned factories, services, and individuals imposed with isolations or quarantines to apply for compensation.

On the same legal basis, the Regulations Governing the Operational Procedures and Compensation for Requisition of Manufacturing Equipment and Raw Materials of Disease Control Resources for COVID-19 were also issued. These regulations addressed the shortage of medical supplies such as face masks resulting from panic buying and a subsequent storage in late January. On 31 January, the government issued a ban on all exports of medical masks according to Article 11 of the Foreign Trade Act and its delegated Regulations Governing Export of Commodities.<sup>29</sup> Furthermore, based on Article 54 of the CDC Act, the government requisitioned all medical masks produced in domestic factories. With the passage of the Special Covid-19 Act, all manufacturers and export companies would be compensated.

Last but not the least, taxpayers affected by Covid-19 could apply for deferred tax payments or payment by installments. Also, in order to allow illegal migrant workers to contact the agency whereby reducing their risks of coronavirus infection in underground work, the National Immigration Agency implemented a temporary amnesty measure to ease its enforcement and lessen punishment between 20 March and 30 June 2020.<sup>30</sup>

<sup>28</sup> Yeh Su-ping and Chiang Yi-ching, "Japanese media praises Taiwan minister for COVID-19 prevention efforts," *The Central News Agency (CNA)*, 1 March 2020, <https://perma.cc/37SY-5PN4>.

<sup>29</sup> Taiwan's government donated 10 million face masks to foreign countries in late April when the domestic supply became stable. The export ban was lifted on 1 June.

<sup>30</sup> Ministry of Finance, ROC, 17 April 2020, <https://perma.cc/MC86-7739>.

### 3. Legal and Social Enforcement Mechanisms

Challenges posed by the Covid-19 pandemic relate not only to legal and regulatory preparedness but also to government capacity, the public health regime, the technology sector, civil society, and perhaps most important of all, the resilience of community. The earlier discussed legal and regulatory measures undertaken in Taiwan have not been significantly different from those undertaken in other countries.

Taiwan's success in combatting the Covid-19 pandemic is also a product of (1) a national health insurance system that guarantees universal healthcare coverage for everyone, (2) an advanced technology sector that is willing to collaborate with the government in times of crisis, (3) a vital civil society that is willing to take on voluntary actions while staying watchful of government's encroachment on civil liberties, and (4) a democratic government that is willing to engage in a transparent and responsive process involving science-based policy communication to the general public.

#### A. National Health Insurance System and Its Database

Established in 1995, Taiwan's NHI has been ranked the best in the world.<sup>31</sup> The NHI system covers 99.7 per cent of the population in Taiwan, including indigenous peoples, low-income families, persons with disabilities, and even eligible foreigners, and provides high-quality medical services at affordable cost. Since its creation, the NHI has significantly enhanced Taiwan's medical system and healthcare capacity.<sup>32</sup>

When the coronavirus outbreak struck, the government instantly took advantage of the NHI system to establish standard Covid-19 medical procedures.<sup>33</sup> In order not to burden medical facilities, it was quickly decided that patients with suspect symptoms would be treated separately in a local clinic or at medical centres according to their severity. With affordable and appropriate medical

<sup>31</sup> According to the Health Care Index compiled by *CEOWORLD Magazine*, the NHI of Taiwan is ranked the top out of eighty-nine countries surveyed. See Sophie Ireland, "Revealed: Countries with the Best Health Care Systems 2019," *CEOWORLD Magazine*, 5 August 2019, <https://perma.cc/HME2-VNTL>.

<sup>32</sup> As of 2016, Taiwan had 289,174 practicing health professionals, including 65,202 physicians. There are 1.6 physicians and 6 hospital beds per 1,000 people in Taiwan. See "2017 Taiwan Health and Welfare Report," Ministry of Health and Welfare, 23 August 2018, <https://perma.cc/8PRB-F8FV>.

<sup>33</sup> See Ya-wen Lei, "National Health Insurance, Health Policy, and Infection Control: Insights from Taiwan," *Contexts Magazine*, 25 March 2020, <https://perma.cc/RLV5-7GDU>. See also Ito Peng and Joseph Wong, "Institutions and Institutional Purpose: Continuity and Change in East Asian Social Policy," *Politics & Society* 36, no. 1 (March 2008): 61; Tsung-Mei Cheng, "Taiwan's New National Health Insurance Program: Genesis and Experience So Far," *Health Affairs* 22, no. 3 (2003): 61.

treatments, the mortality rate of Covid-19 has been substantially reduced. Most importantly, patients with confirmed or suspect symptoms would not hesitate to visit hospitals or take tests. It has therefore been relatively easy for the government to trace and track infected cases and prevent any possible spread.

The NHI database also provides a vital infrastructure for Covid-19 digital responses. In 2013, the National Health Insurance Administration (NHIA) had installed the MediCloud system to electronically store medical records in the cloud to improve data transfer efficiency for decentralized healthcare providers across Taiwan. This MediCloud system has been vital in distributing face masks to everyone and successfully tracing confirmed patients or patients with suspect symptoms based on their travel histories and contact information. Without this system, it would not have been possible for the government to deploy early and swift digital responses that have helped to protect medical personnel and reduce social vulnerability.

## B. Technology Governance

Taiwan's digital technology has also contributed significantly to effective implementation of Covid-19 regulatory measures.<sup>34</sup> Digital enforcement has been deployed to facilitate, rather than to replace, human-led efforts. Facing serious privacy concerns, these digital solutions have been deployed carefully to strike a balance between the need of pandemic control, the compliance with rule of law, and the protection of civil liberties.

In mid-March 2020, Taiwan developed a so-called "electronic fence" system to monitor compliance with isolation or quarantine orders. A list of telephone numbers of those undergoing isolation or quarantine was sent to telecom companies. Through mobile electromagnetic radiation, the operators could trace the movement of a de-identified mobile phone signal that contained no identifiable personal information. When isolated or quarantined individuals left their designated shelter locations or turned off their mobile devices, the system would then notify police, civil, and health authorities. Only the first responders would receive information of the violator's name, phone number, and address for further required action. This way, the "electronic fence" ensured the compliance of quarantine orders without overtly comprising individual privacy.

<sup>34</sup> See also Andreas Kluth, "If We Must Build a Surveillance State, Let's Do It Properly," *Bloomberg Opinion*, 22 April 2020, <https://perma.cc/K6HE-FUXF>; Ravi Aron, "Combating COVID-19: Lessons from Singapore, South Korea, and Taiwan," *Knowledge*, 21 April 2020, <https://perma.cc/6YFH-A6WE>.

Cell broadcasting technology was also deployed to enforce social distancing beginning 1 April. When people flooded to popular attractions during the spring break, cellular broadcasting was used to alert people about areas of crowding and where there might be a commensurate increased risk of infection. Similar to the technology used in the “electronic fence,” the cell broadcasting system relies on cell-tower data, and no personal data is disclosed.<sup>35</sup> As previously mentioned, according to Article 10 of the CDC Act, those in the public or private sector with access to personal data are prohibited from disclosing any such information.

### C. Civil Society and Community Involvement

Previous public health crises, including the SARS outbreak in 2003, transformed Taiwan into a resilient society with heightened risk awareness. With the government’s initiative, such risk awareness successfully mobilized local communities and civic groups to participate in collective efforts of pandemic prevention. People in Taiwan were voluntarily washing hands, checking temperatures, wearing face masks, and exercising precautions in public and private gatherings. A sense of an epidemic-proof community was generated, with everyone playing a part.

In the beginning of the pandemic, local clinics, drugstores, and healthcare providers in the NHI system all participated in the network of disease control and medical resource distribution. With the growing numbers of confirmed cases in March, the minister of the interior issued a guideline to coordinate local administrations, medical facilities, social welfare institutions, schools, civic groups, volunteer police, and firemen in the work of combatting Covid-19.<sup>36</sup> Some of the major tasks for the local workforce were facilitating the implementation of quarantine orders, helping to disseminate risk information on mitigating the spread of the virus to local residents, and supporting those with confirmed diseases or in isolation or quarantine.

This strategy sees civil society and local communities as collaborative partners in combatting Covid-19, helping to shape a sense of community in launching collective efforts. At the same time, however, many civil groups and human rights organizations have not shied away from voicing concerns or disagreements. They

<sup>35</sup> See also Chi-Mai Chen et al., “Containing COVID-19 Among 627,386 Persons in Contact With the Diamond Princess Cruise Ship Passengers Who Disembarked in Taiwan: Big Data Analytics,” *Journal of Medical Internet Research* 22, no. 5 (May 2020), <https://perma.cc/FQZ6-LXYL>.

<sup>36</sup> On 3 March, the government enacted the 因應嚴重特殊傳染性肺炎(COVID-19)社區防疫人力工作指引 [Guidelines for Epidemic prevention workforce to respond Covid-19 to coordinate efforts from local communities in preventing COVID-19 pandemic]; see <https://perma.cc/YA2J-87PG>.

have remained on alert to potential privacy concerns, civil liberty violations, or unequal distributions of medical resources. Even front-line healthcare workers, while collaborating with the government, have been attentive to their own rights and work safety. Taiwan's vibrant civil society and local communities have been a crucial counterbalance to government power, weakening the tendency of power concentration that has been seen in other countries where democratic backsliding or authoritarian governance has been revived in the name of pandemic control.

#### D. Transparent and Responsive Process

The legal framework, national health insurance system, technology sector, and vibrant civil society have all contributed to Taiwan's Covid-19 governance. Yet, without a democratic government that is willing to engage in a transparent and responsive process for developing and implementing regulatory measures, all those efforts from different societal sectors could still be substantially compromised.

On 11 January 2020, Taiwan underwent both presidential and parliamentary elections, in which the sitting president, Tsai Ing-wen, won her second term with a landslide victory, and her ruling party continued a sizeable majority in the legislature.<sup>37</sup> When the pandemic struck, the government was confident of its renewed mandate and public trust. Still, the CECC, the command centre primarily consisting of medical professionals from the Ministry of Health and Welfare, was keenly aware of the importance of maintaining public trust and democratic accountability in a pandemic. From the day it was established, the Central Command held daily live-broadcast press conferences to provide updates on Covid-19-related information and government policies to dispel fake news and misinformation.<sup>38</sup> In addition, the Central Command has made its decision-making process transparent, evidenced-based, and open to public scrutiny, taking as many questions as possible from journalists and reporters. All relevant information on Covid-19 can be quickly verified with supporting materials on the official website. Transparent and accurate information has been working as an effective method for minimizing public panic in the face of uncertainty.<sup>39</sup>

<sup>37</sup> "Taiwan election: Tsai Ing-wen wins second presidential term," *BBC News*, 11 January 2020, <https://perma.cc/KG3S-BY8R>.

<sup>38</sup> Victor Pu, "The Coronavirus Outbreak: How Democratic Taiwan Outperformed Authoritarian China," *The Diplomat*, 27 February 2020, <https://perma.cc/9MGX-2NAW>; Jaron Lanier and E.G. Weyl, "How Civic Technology Can Help Stop a Pandemic," *Foreign Affairs*, 20 March 2020, <https://perma.cc/GPH4-QM5B>.

<sup>39</sup> Sean Lin, "Virus Outbreak: Supplies of Food, Daily Necessities Sufficient," *Taipei Times*, 21 March 2020, <https://perma.cc/F24K-PYVG>.

Daily conferences and social media have also provided the Central Command a great opportunity to reduce unnecessary political confrontation and human rights encroachment. For example, as the first confirmed case of an undocumented migrant worker was reported, the general public reacted strongly against those illegal migrant workers, and the Ministry of Labor was pushed to investigate and quickly expel illegal migrant workers to prevent a possible loophole. Yet, the Central Command took the opportunity of daily conferences to remind people of contributions that migrant workers have made to Taiwan's healthcare system and, most importantly, the negative impact that harsh enforcement policies have on illegal migrant workers, pushing them underground and further compromising the control of the pandemic.<sup>40</sup> In mid-2020, public discussions or even debates of this kind were ongoing between the government and many different stakeholders.

These transparent and responsive dialogues helped to ease concerns with the broad power delegation to the government to deal with pandemic, and even further, to ensure government accountability and sustain democratic legitimacy.<sup>41</sup> While the Covid-19 pandemic led to concentrating power and shrinking democratic space in many other countries,<sup>42</sup> it provided Taiwan a genuine opportunity to strengthen its resilience in building democracy and the rule of law.

#### 4. Conclusion

Taiwan's near-miraculous achievement in controlling the Covid-19 pandemic proved that a democracy can successfully contain the spread of the virus. The abuse or misuse of powers in authoritarian or dictatorial regimes in the name of fighting the pandemic did not always work,<sup>43</sup> and many lives were unnecessarily

<sup>40</sup> Ming-cheng Lo, "Taiwan's state and its lessons for effective epidemic intervention, the global coronavirus epidemic: commentary on east Asia's response," *Contexts Magazine*, 25 March 2020, <https://perma.cc/RLV5-7GDU>.

<sup>41</sup> Recent polls have suggested that the government's containment of the pandemic led the ruling party to secure the astoundingly high approval rating of 70–90 per cent, an unusually large margin in Taiwan's usually heated competitive political system. See Shelley Shan, "Virus Outbreak: Most people happy with Chen as CECC head, survey finds," *Taipei Times*, 30 March 2020, <https://perma.cc/WY5B-T6XB>.

<sup>42</sup> For discussion of the impact of the coronavirus on global democracy, see Frances Z. Brown, Saskia Brechenmacher, and Thomas Carothers, "How Will the Coronavirus Reshape Democracy and Governance Globally?," Carnegie Endowment for International Peace, 6 April 2020, <https://perma.cc/8FW3-DXT9>.

<sup>43</sup> Authoritarian governments may be able to take swift actions to successfully control virus spread, but those over-restrictive measures, including severe criminal punishments, may lead to serious violations of human rights and expansive powers of government in the longer term without effective checks. Discussions on other Asian jurisdictions including China and Vietnam could be of reference.

sacrificed. Examples, including China and Russia, are abundant. What this global pandemic taught us is that only a more transparent and responsive government can effectively deal with a public health crisis and that other than legal rules, government capacity, the strength of the science and technology sector, and the vitality of civil society and local community are equally—if not more—important in forging a collective effort. To mitigate tensions between managing a public health crisis and sustaining constitutional democracy, what is necessary is not always formal legal rules, but a functioning legal framework under which democratic processes can respond promptly and ensure accountability—so that all stakeholders can join in a collective effort to find common solutions through open dialogue and contestation.

# 4

## Vietnam: Marshalling State and Non-State Actors

Cuong Nguyen\* and Thanh Phan\*\*

### 1. Introduction

In May 2020, as the rate of new confirmed Covid-19 cases and fatalities was growing in many parts of the world, Vietnam reopened its economy with no new cases from the community and no deaths.<sup>1</sup> While most economies were forecasted to shrink in 2020, the post-pandemic GDP of Vietnam was expected to grow by 4.8 per cent in 2020 and 6.8 per cent in 2021.<sup>2</sup> These results not only boosted trust in the Vietnamese government but also enhanced the confidence of foreign investors. Vietnam's success in the Covid-19 pandemic was not a matter of luck but a consequence of its experience with earlier epidemics and the determination of the Vietnamese people and governments at all levels.<sup>3</sup>

When the coronavirus outbreak emerged in the Chinese city of Wuhan, the government of Vietnam considered it a highly contagious disease and immediately implemented all necessary measures to protect people from the emerging pandemic, even if these strict measures resulted in massive economic losses. For the first time, a country with a limited budget for healthcare provided free food, medical services, and supplies for Covid-19 patients and those held in quarantine. Also, echoing the national attitude during the previous wars, the Vietnamese people showed their strict compliance with and trust in the government's measures during a national crisis. Vietnam's response to the Covid-19 pandemic suggests that when a government sacrifices economic growth for people's health, it can earn both.

\* Director, Institute of Legal Science (Vietnam).

\*\* Associate, Centre for Asia-Pacific Initiatives, University of Victoria (<https://orcid.org/0000-0001-9283-6240>).

<sup>1</sup> Jacques Morisset, "Vietnam: a bright star in the COVID-19 dark sky," *World Bank Blogs*, 28 May 2020, <https://blogs.worldbank.org/eastasiapacific/vietnam-bright-star-covid-19-dark-sky>.

<sup>2</sup> "Economic Indicators for Vietnam," Asian Development Bank, accessed 15 May 2020, <https://www.adb.org/countries/viet-nam/economy>.

<sup>3</sup> In Vietnam, this crisis is referred to as an "epidemic." The term "pandemic" will be used to refer to the coronavirus crisis in the global context.



This chapter examines Vietnam's campaign against Covid-19 (we call it the Covid-19 campaign), explaining how it managed to contain the first two waves of the epidemic. The first section describes the emergence of the Covid-19 epidemic in Vietnam and the government's policy responses. The second section introduces the regulatory framework, which enabled the government and other non-state actors in Vietnam to fight the epidemic effectively. The third section discusses how Vietnam contained the spread of the virus in practice from the perspectives of health and medical policy, information and technology, economic policy, and international cooperation. The last section evaluates Vietnam's efforts and concludes that Vietnam's unique response derives from four factors: (1) the policy that prioritized public health over economic considerations; (2) Vietnam's having been well prepared for dealing with contagious diseases since the Severe Acute Respiratory Syndrome (SARS) outbreak in 2003 and the government immediately introducing strict measures to prevent the spread of Covid-19 when it emerged in China; (3) the legal framework specifying the roles of the central and local governments to avoid any bureaucratic delays in making decisions in an epidemic; and (4) the government flexibly combining coercive means with deliberate action, public education, effective governance, and effective coordination with the community and the private sector.

## 2. Background: The Emergence of Covid-19 in Vietnam

On 23 January 2020, Vietnam confirmed its first Covid-19 patient, a Chinese national travelling from Wuhan. On the same day, the Vietnamese prime minister ramped up the country's response by sending an urgent document to ministries, provinces, and state-owned broadcasting agencies addressing the dangerousness of the virus and the need for measures to prevent transmission of the virus in the community.<sup>4</sup> One week later, the government established a National Steering Committee on Epidemic Prevention to deal with the spread of the new coronavirus.<sup>5</sup> The prime minister framed the Covid-19 campaign as just as serious and urgent as a war, ordering ministries, local governments, organizations, and individuals to strictly implement the prevention measures. He also directed that the government prioritize people's life and health over economic considerations.<sup>6</sup>

<sup>4</sup> Prime Minister's Official Document about Preventing the Acute Respiratory Infection by a New Strain of Corona Virus, 23 January 2020, No. 121/CĐ-TTg.

<sup>5</sup> Prime Minister's Decision Establishing a National Steering Committee on Preventing the Acute Respiratory Infection by a New Strain of Corona Virus, 30 January 2020, No. 170/QĐ-TTg.

<sup>6</sup> Prime Minister's Directive of the Prime Minister Implementing Measures in Response to the Acute Respiratory Infection by a New Strain of Corona Virus, 31 January 2020, No. 06/CT-TTg at point 1.

Given that Vietnam shares 1,065.652 kilometres of land border with China<sup>7</sup> and the two countries have strong economic ties, the number of Covid-19 cases in Vietnam increased every day during the initial outbreak, and most of the infected persons were from China. On 31 January 2020, Vietnam implemented stricter measures, suspending flights from and to the epicentres of disease in China, restricting Chinese tourists, and closing trails connecting Vietnam and China. It also recommended that people suspend trade and other exchange activities between the two countries during the pandemic.<sup>8</sup> The quick decision to limit cross-border transactions with Vietnam's largest trade partner indicated the extent of the government's commitment to prioritizing public health.<sup>9</sup>

Some weeks later, when some cities in the Republic of Korea (South Korea) became epicentres of Covid-19 outside China, Vietnam again rapidly implemented protective containment measures by suspending the entry into Vietnam of persons travelling from or through South Korea, requiring individuals to declare their health status on a mandatory basis, and implementing a mandatory fourteen-day quarantine for anyone entering Vietnam for non-tourist purposes.<sup>10</sup> These measures negatively disrupted the economic relationship with South Korea, Vietnam's second-largest trade partner.<sup>11</sup> However, these thorough and timely responses also produced positive results. The number of cases stopped at sixteen on 13 February 2020 with no deaths.<sup>12</sup> Vietnam had experienced twenty-three days with no new cases and sixteen infected patients fully recovered.<sup>13</sup>

The second wave of Covid-19 hit Vietnam on 6 March 2020. The seventeenth confirmed case was a person who had participated in a fashion festival in Milan during an outbreak in Italy. She had taken a flight from the United Kingdom to Vietnam and did not declare her travel history in Italy, as required under Vietnam's *Law on Prevention and Control of Infectious Diseases*. The number of new Covid-19 cases rose again and included some passengers who took the

<sup>7</sup> "Land border between Vietnam and China," Border Defense Force of Vietnam, last modified 13 December 2011, <http://bienphongvietnam.vn/cong-tac-bien-phong/duong-bien-moc-gioi/223-dbm04.html>.

<sup>8</sup> "Land border," at points 3 and 7.

<sup>9</sup> In 2019, the imports from China totalled USD 75.45 billion, and the exports to China from Vietnam totalled USD 41.41 billion, compared with those from and to the United States, totalling USD 14.37 billion and USD 61.35 billion, respectively. See more at "Imports and Exports of Vietnam in 2019," Customs of Vietnam, accessed 10 May 2020, <https://www.customs.gov.vn/Lists/ThongKeHaiQuan/ViewDetails.aspx?ID=1734&Category=Phân%20t%20C3%ADch%20định%20kỳ&Group=Giới%20thiệu>.

<sup>10</sup> Prime Minister's Directive about Fighting against Covid-19 Epidemic, 25 February 2020, No. 10/CT-TTg at point 2.a.

<sup>11</sup> "Imports and Exports."

<sup>12</sup> "Covid-19 Figures in Vietnam," Ministry of Health of Vietnam, accessed 5 May 2020, <https://ncov.vncdc.gov.vn>.

<sup>13</sup> Directive No. 10/CT-TTg at Preface.

same flight back with her from the United Kingdom. The emergence of infected travellers from countries other than China and South Korea motivated the government to intensify its border control measures, reducing international flights, suspending a visa waiver program for citizens of some European countries, requiring travellers from or through affected areas to spend fourteen days in government-run quarantine camps, and even locking down for fourteen days any residential area with a patient who tested positive for Covid-19.<sup>14</sup>

By 27 March 2020, when the number of confirmed cases had escalated to 163,<sup>15</sup> the prime minister suspended all social, cultural, and religious events with more than twenty people and closed all non-essential workplaces.<sup>16</sup> Five days later, Vietnam implemented a nationwide lockdown for fourteen days. Social-distancing requirements were imposed, and gatherings of more than two were prohibited.<sup>17</sup> On 1 April 2020, the prime minister issued Decision 447/QĐ-TTg declaring the Covid-19 epidemic in Vietnam.<sup>18</sup>

When the nationwide lockdown ended on 15 April 2020, the number of confirmed cases in Vietnam was 268, with 171 patients fully recovered and no deaths (see Table 1). The government reopened the economy in parallel with implementing strict measures to contain the virus, for example, continuing to quarantine inbound international travellers for fourteen days in government-run camps. The next section will introduce the Vietnamese legal framework, which allowed the abovementioned actors to effectively perform their rights and obligations during the Covid-19 campaign.

### 3. Vietnamese Legal Framework in Response to Covid-19

Vietnam has not enacted any new laws in response to the spread of Covid-19, although the *Law on the Promulgation of Legal Documents 2015* allowed the legislature to pass a law on a fast-track procedure to deal with an epidemic.<sup>19</sup> The readiness of the regulatory framework enables the government and non-state actors in Vietnam to fight against the epidemic effectively by specifying enforcement measures in advance. This section introduces the Vietnamese legal

<sup>14</sup> Prime Minister's Directive about Fighting against Covid-19 Epidemic, 11 March 2020, No. 13/CT-TTg at point 2.

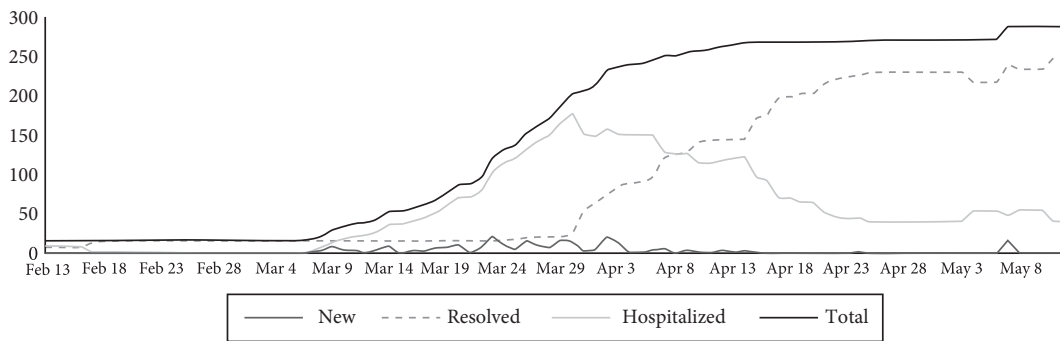
<sup>15</sup> "Covid-19 Figures."

<sup>16</sup> Prime Minister's Directive about Fighting against Covid-19 Epidemic, 27 March 2020, No. 15/CT-TTg at point 2.

<sup>17</sup> Prime Minister's Directive Implementing Urgent Measures Fighting against Covid-19 Epidemic, 31 March 2020, No. 16/CT-TTg at point 1.

<sup>18</sup> Prime Minister's Decision Declaring the Covid-19 Epidemic, 1 March 2020, No. 447/QĐ-TTg.

<sup>19</sup> Law on the Promulgation of Legal Documents, 22 June 2015, No. 80/2015/QH13 at arts. 146–149.

**Table 1** Covid-19 cases in Vietnam<sup>a</sup>

<sup>a</sup>“Covid-19 Figures.”

framework for dealing with an epidemic, focusing on several documents essential to the Covid-19 campaign, including the Constitution, *Law on Prevention and Control of Infectious Diseases*, *Criminal Code*, and some subsidiary legal instruments.

### A. The Constitution of Vietnam

The Constitution of Vietnam,<sup>20</sup> enacted in 2013, provides the legal framework for human rights and citizens’ rights, the political regime, and the function of central and local governments, among others. The Constitution recognizes, respects, protects, and guarantees political, civic, economic, cultural, and social human rights and rights of citizens and emphasizes that all citizens are entitled to healthcare and protection and to have equal access to medical services.<sup>21</sup> Not only Vietnamese but also foreigners residing in Vietnam are protected under Vietnamese laws.<sup>22</sup> The Constitution, therefore, imposes a duty on the government to take necessary public health measures during an epidemic.

Although some of the strict Covid-19 measures, such as travel restrictions, lockdowns, or mandatory quarantines in government-run camps, limit human rights and constitutional rights, the Constitution expressly allows such limits as are necessary to protect community health.<sup>23</sup> It also imposes constitutional duties to comply with laws and regulations on medical treatment and the prevention of diseases.<sup>24</sup>

<sup>20</sup> The first *Constitution of the Socialist Republic of Vietnam* was enacted in 1946.

<sup>21</sup> *The Constitution of Vietnam*, 28 November 2013, at arts. 14.1 and 38.1.

<sup>22</sup> *Constitution*, at art. 48.

<sup>23</sup> *Constitution*, at art. 14.2.

<sup>24</sup> *Constitution*, at art. 38.2.

The duties and power of the government of Vietnam are regulated in Chapter VII of the Constitution. Article 96 of the Constitution provides the government with an exclusive right to govern, among others, economic, cultural, social, security, and medical activities. The government also has the right to declare a state of emergency,<sup>25</sup> mobilize resources, and carry out all other necessary measures to protect the country and to safeguard the life and the property of the people.<sup>26</sup> When exercising its duties, the government, led by the prime minister, has the right to issue legal documents within its authority.<sup>27</sup> During the Covid-19 campaign, the prime minister provided a series of directives, while the government has also issued some resolutions that addressed daily challenges in a timely way. The prime minister also has a duty and the power to direct the activities of the central and local governments to ensure the unity and thoroughness of the national administration.<sup>28</sup>

Local governments are indispensable parts of the Covid-19 campaign in Vietnam. While the central government of Vietnam outlines the direction and measures to protect people from the spread of coronavirus, local governments directly implement such measures.<sup>29</sup> In the early stages of the campaign, the central government worked closely with local governments to outline strategies and solutions and to mobilize and distribute resources to deal effectively with Covid-19. The central government also sent experts, doctors, epidemiologists, equipment, and medical supplies to district-level hospitals in the provinces to which the epidemic might have spread, rather than moving Covid-19 patients to central hospitals. Vietnam's strategy for dealing with the epidemic includes "four-on-site" elements: on-site task forces, on-site command, on-site equipment, and on-site logistics.<sup>30</sup> This means when a person tests positive for Covid-19, the lowest local government will send the patient to the nearest designated hospital, including a district-level hospital, where doctors and nurses are capable of dealing with the coronavirus. The local government is then in charge of making decisions to quarantine, locking down infected areas, and sterilizing areas where Covid-19 patients live. When the situation is under control, the central government will provide the local government with more experts and resources as necessary. The unified system of government under the Constitution therefore allows the authorities at different levels to coordinate effectively.

<sup>25</sup> Vietnam did not declare a state of emergency in response to Covid-19.

<sup>26</sup> *Constitution*, at art. 96.3.

<sup>27</sup> *Constitution*, at art. 100.

<sup>28</sup> *Constitution*, at art. 98.2.

<sup>29</sup> The duties and power of local governments are regulated in the *Constitution*, at art. 112.

<sup>30</sup> This strategy was officially mentioned in Prime Minister's Directive about Fighting against Covid-19 Epidemic, 24 April 2020, No. 19/CT-TTg at point 1.c.

In addition to the government, non-state actors were active in dealing with the threat of Covid-19 in Vietnam. The Constitution of Vietnam regulates the rights and power of the Vietnam Fatherland Front “a political alliance and a voluntary union of political organizations, sociopolitical organizations, social organizations and individuals representing their social classes, nationalities, religions, and overseas Vietnamese.”<sup>31</sup> During the Covid-19 campaign, the Vietnam Fatherland Front initiated several charitable activities in some provinces, calling for contributions from corporations and individuals to support front-line workers, laid-off employees, and low-income people. The Vietnam Fatherland Front also ran a fund-raising campaign, which raised VND 2 trillion (CAD 120,448,447) from Vietnamese citizens to support the government during the epidemic.<sup>32</sup>

## B. Law on Prevention and Control of Contagious Diseases

The National Assembly of Vietnam passed the *Law on Prevention and Control of Contagious Diseases* in 2007, regulating the measures taken by the authorities to prevent and control contagious diseases with human-to-human transmission, especially in case of an epidemic. This law was drafted after the outbreak of SARS in 2003, which caused 778 deaths globally.<sup>33</sup> While the National Assembly was drafting this new law, the prime minister issued the Decision No.255/2006/QĐ-TTg dated 9 November 2006 approving a four-year National Strategy on Preventive Medicine, with a longer-term orientation to 2020 (the National Strategy). The National Strategy outlines scenarios, reaction plans, and measures for containing the spread of contagious diseases which may cause dangerous epidemics, especially newly arising ones.

Before the Covid-19 epidemic, the *Law on Prevention and Control of Contagious Diseases* and the National Strategy provided Vietnamese authorities with legal tools for preventing the transmission into Vietnam of diseases such as Type A flu, MERS-CoV, and Ebola.<sup>34</sup> When an epidemic is declared in Vietnam, the law requires the central government and the local governments at the provincial, district, and commune levels to establish steering committees on

<sup>31</sup> *Constitution*, at art. 19.

<sup>32</sup> Huong Diep, “About VND 2 trillion raised to Support the Prevention of Covid-19,” *Vietnam Fatherland Front*, 6 May 2020, <http://mattran.org.vn/hoat-dong/gan-2000-ty-dong-ung-ho-va-dang-ky-ung-ho-phong-chong-dich-covid19-33569.html>.

<sup>33</sup> “SARS (Severe Acute Respiratory Syndrome),” World Health Organization, accessed 5 May 2020, <https://www.who.int/ith/diseases/sars/en/>.

<sup>34</sup> “60th Anniversary of the General Department of Preventive Medicine,” Ministry of Health of Vietnam, accessed 5 May 2020, <http://vncdc.gov.vn/vi/tin-tuc-trong-nuoc/1041/nganh-y-te-du-phong-60-nam-doi-moi-va-phet-trien>.

epidemic prevention.<sup>35</sup> The head of the national steering committee is a deputy prime minister, and the head of local steering committees is the chairperson of the people's committee of the same level, who is responsible for law enforcement within their territorial authority.<sup>36</sup> Each committee also includes representatives from health, finance, information-communication, military, public security, and other related agencies at the same level. This structure allows the authorities to avoid bureaucratic delays when fighting an epidemic. Steering committees are key to implementing the four-on-site strategy in Vietnam.

During an epidemic, the authorities are entitled to close businesses that potentially spread diseases, request physical distancing, suspend public activities, and even lock down areas with a disease outbreak.<sup>37</sup> The law also allows the authorities to mobilize human resources and requisite private facilities, medical equipment, medicines, chemicals, medical supplies, and other resources when necessary.<sup>38</sup>

In addition to the rights and power of governmental authorities, the *Law on Prevention and Control of Contagious Diseases* sets forth a list of violations including acts that intentionally transmit diseases to other people, misrepresent information related to diseases, and fail to comply with measures requested by governmental authorities to prevent and control diseases.<sup>39</sup> Most of the violations of this law during the Covid-19 epidemic in Vietnam involved misrepresentation. Several people travelling from abroad falsely declared their travel history to avoid spending fourteen days in quarantine, spreading the virus to the community. Government authorities thereafter incurred prohibitive costs in tracking and placing in quarantine those in direct contact with the violators; they also had to lock down for fourteen days some residential areas where these people lived to prevent local transmission.

The government also promulgated Decree No. 176/NĐ-CP dated 14 November 2013 on Administrative Sanctions on Violations of Law and Regulations in Health and Medical Sector. This decree specifies in detail monetary punishments and other legal ramifications that the authorities can apply to a person violating health and medical laws, more specifically, the *Law on Prevention and Control of Contagious Diseases*. For example, a person who conceals his or her infection during an epidemic is liable to a monetary punishment not exceeding VND 2,000,000 (CAD 120).<sup>40</sup> A person or corporation failing to comply with an order

<sup>35</sup> *Law on Prevention and Control of Contagious Diseases*, 21 November 2007, No. 03/2007/QH12 at art. 46.

<sup>36</sup> *Law on Prevention and Control of Contagious Diseases*, at art. 46.

<sup>37</sup> *Law on Prevention and Control of Contagious Diseases*, at arts. 52 and 53.

<sup>38</sup> *Law on Prevention and Control of Contagious Diseases*, at art. 55.

<sup>39</sup> *Law on Prevention and Control of Contagious Diseases*, at art. 56.

<sup>40</sup> Decree on Administrative Sanctions on Violations of Law and Regulations in Health and Medical Sector, 14 November 2013, No. 176/NĐ-CP at art. 11.2.a.

to close a business that could potentially transmit diseases during an epidemic is subject to a fine no more than VND 10,000,000 (CAD 600).<sup>41</sup> Decree No. 176/NĐ-CP covers a wide array of violations that have adverse effects on the Covid-19 campaign. For acts that cause more serious damage to society, violators may be prosecuted under the *Criminal Code*.

### C. The *Criminal Code*

The current *Criminal Code* of Vietnam, enacted in 2015 and amended in 2017, regulates crimes and criminal sanctions in Vietnam. During the Covid-19 epidemic, the *Criminal Code* has played a pivotal role in preventing and punishing acts that cause or threaten to cause serious damage to society. This subsection discusses in detail three groups of crimes related to the epidemic.

The first group criminalizes health-related behavior dangerous to the public. A person who wilfully spreads diseases is liable to a fine not exceeding VND 200 million (CAD 12,000) and/or imprisoned for no more than twelve years.<sup>42</sup> This regulation can also be applied to prosecute those who falsely declare their travel history or health situations, resulting in an outbreak. Those who are required to spend fourteen days in quarantine but do not comply with the authorities' requirements and/or leave the quarantine camp without permission can be charged up to VND 100 million (CAD 6,000) or imprisoned for no more than twelve years.<sup>43</sup> In addition, a person who assaults a governmental official who is enforcing laws related to the Covid-19 campaign is liable to imprisonment for a term not exceeding seven years.<sup>44</sup>

A second group of crimes relates to hoarding. In the early stages of the epidemic, some stores and individuals hoarded masks and hand sanitizer and then sold these items at a much higher price. These acts led to a temporary shortage and price gouging of essential products. In addition to increasing the supply, the government also strictly warned corporations and individuals of the criminal sanctions against hoarding, which includes a monetary punishment of no more than VND 5 billion (CAD 298,000) or fifteen years' imprisonment.<sup>45</sup>

A third group encompasses acts that publish false information causing damage to the public. During the epidemic, the government has been enforcing laws against the spread of misleading news that made people, for example, stock food at higher prices, apply dangerous measures to treat the virus, or broadcast

<sup>41</sup> Decree on Administrative Sanctions, at art. 11.4.a.

<sup>42</sup> *The Criminal Code*, 10 July 2017, 01/VBHN-VPQH at art. 240.

<sup>43</sup> *The Criminal Code*, at art. 295.

<sup>44</sup> *The Criminal Code*, at art. 330.

<sup>45</sup> *The Criminal Code*, at art. 196.



a false number of Covid-19 cases and deaths in Vietnam. Most of these cases involved the use of media such as Facebook or YouTube. Those who published this kind of information causing damage to the public were liable to a monetary surcharge not exceeding VND 1 billion (CAD 60,000) or imprisonment for a term not exceeding seven years.<sup>46</sup>

#### 4. Fighting against Covid-19 in Practice

The legal framework and the determination of the government were key factors to containing Covid-19 in Vietnam. The compliance by Vietnamese people and non-state actors also helped the government fight the virus. This section discusses how Vietnam prevented the spread of the virus in practice from the perspective of health and medical policy, information and technology, economic policy, and international cooperation.

##### A. Health and Medical Measures

Vietnam has mobilized almost its entire medical sector, including those working for state-owned, private, and military institutions.<sup>47</sup> Experts working for medical schools and retired medical professionals also voluntarily participated in the Covid-19 campaign.<sup>48</sup> The Ministry of Health of Vietnam has also prepared necessary resources for the scenarios in which the virus spreads across a wide area.<sup>49</sup>

In addition to the civilian forces, the Ministry of Defense of Vietnam has firmly contributed to the Covid-19 campaign. In the early stages of the epidemic, the Ministry of Defense established a steering committee which outlined an action plan for fighting the spread of the virus.<sup>50</sup> Military forces provided the government with four essential pillars to contain the Covid-19. First, the military medical institutions developed a test kit which enables the diagnosis of coronavirus infections within one hour. Second, the chemical corps sterilized quarantine camps and locked down residential areas, hospitals, and some cities during the outbreak. Third, the border defense force was deployed along the land borders between Vietnam and neighboring countries, especially China, to

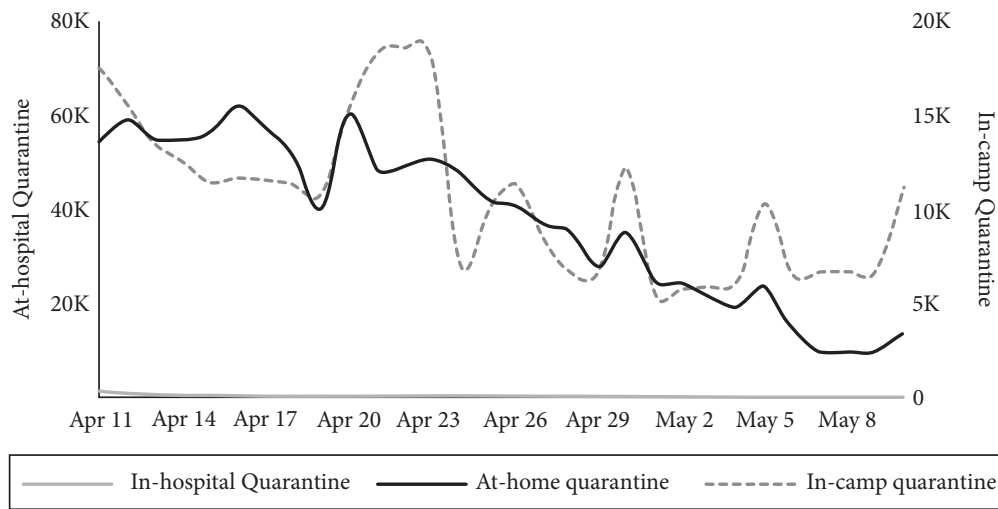
<sup>46</sup> *The Criminal Code*, at art. 288.

<sup>47</sup> “Mobilizing the Entire Preventive Medicine Human Resources to Prevent the Covid-19 Epidemic,” Ministry of Health of Vietnam, accessed 10 May 2020, [https://moh.gov.vn/tin-tong-hop/-/asset\\_publisher/k206Q9qkZOqn/content/huy-ong-toan-bo-luc-luong-y-te-phong-chong-ai-dich-covid-19](https://moh.gov.vn/tin-tong-hop/-/asset_publisher/k206Q9qkZOqn/content/huy-ong-toan-bo-luc-luong-y-te-phong-chong-ai-dich-covid-19).

<sup>48</sup> “Mobilizing the Entire.”

<sup>49</sup> “Mobilizing the Entire.”

<sup>50</sup> “Vietnamese People’s Military Forces Have Been Contributing to the Covid-19 Campaign,” Ministry of Defence of Vietnam, accessed 10 May 2020, <https://bit.ly/3mgx861>.

**Table 2** Quarantine in Vietnam<sup>a</sup>

<sup>a</sup> Ministry of Health of Vietnam, “Covid-19 Figures in Vietnam.”

prevent undocumented travellers from crossing the border.<sup>51</sup> Finally, the military forces converted 137 military bases into quarantine camps for Vietnamese citizens and foreigners arriving from abroad during the pandemic. Most of the soldiers residing in these bases had to set up temporary tents in jungles and rural areas; others served the quarantine camps.<sup>52</sup>

The government has also held hundreds of thousands of people in government-run quarantine camps and locked down residential areas for fourteen days due to Covid-19 (see Table 2). Quarantined people, including foreigners, were provided three meals a day and essential supplies free of charge. Local governments have also supplied free food and toilet paper to residents in locked-down areas. In addition, Vietnamese nationals with Covid-19 were provided free medical services.<sup>53</sup> This policy successfully prevented people from stockpiling goods during the epidemic.

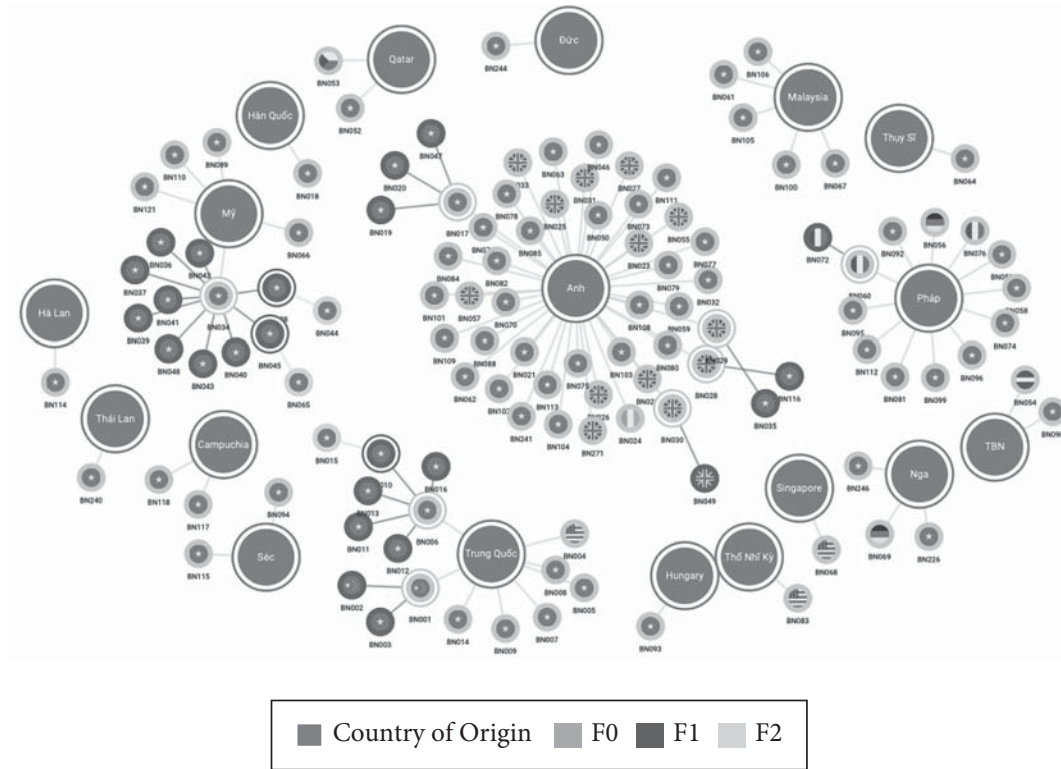
## B. Information and Technology

Vietnam has employed a wide array of tools to communicate with citizens during the epidemic. In addition to broadcasting news, the Ministry of Health and the

<sup>51</sup> People living near the border sometimes cross the border without a passport.

<sup>52</sup> “Vietnamese People’s Military Forces.”

<sup>53</sup> Resolution of the Government on the Coverage of Costs Related to Covid-19 Epidemic, 29 March 2020, No. 37/NQ-CP at art. 3.b.



**Diagram 1:** Tracking and classifying Covid-19-related persons<sup>a</sup>

<sup>a</sup> “Covid-19 Figures in Vietnam.”

central government have sent daily updates via text messages explaining what people should do to prevent infection.<sup>54</sup> The Ministry of Health in cooperation with the Ministry of Information and Communication developed an “Electronic Mask Bluezone” application, which alerts users who had direct contact with exposed persons to minimize community transmission.<sup>55</sup>

Another factor that helped the government flatten the curve of Covid-19 was the information system that tracked sources of virus transmission and classified those who contacted infected persons according to different levels. The tracking and classification system helped investigate the travel history of each Covid-19 case, allowing the government to hospitalize patients with Covid-19 (F0), timely quarantine those who directly contacted with the patients (F1–persons), and closely monitor those who had been exposed to F1 persons (see Diagram 1).

<sup>54</sup> See, for example, David Hutt, “The Coronavirus Loosens Lips in Hanoi,” *Foreign Policy*, 15 April 2020, [https://foreignpolicy.com/2020/04/15/coronavirus-vietnam-communist-party-hanoi/?fbclid=IwAR0DyhYc1uljIcu6MHB7PMvecvj3fRyO0r6aR\\_ModV5fdBoG0tngK-68AFI](https://foreignpolicy.com/2020/04/15/coronavirus-vietnam-communist-party-hanoi/?fbclid=IwAR0DyhYc1uljIcu6MHB7PMvecvj3fRyO0r6aR_ModV5fdBoG0tngK-68AFI).

<sup>55</sup> Details about the app can be found at “Bluezone – Electronic Mask,” Google Play, accessed 5 May 2020, [https://play.google.com/store/apps/details?id=com.mic.bluezone&hl=en\\_US](https://play.google.com/store/apps/details?id=com.mic.bluezone&hl=en_US).

In addition to implementing strict measures to prevent the spread of Covid-19, the government also provided state-owned institutions and private firms with support to foster the development of medical devices. On 5 March, the Vietnam Military Medical University and Viet A Corporation introduced a test kit they developed, which uses a real-time reverse transcription polymerase chain reaction (RT-PCR) technique. This kit enables the diagnosis of coronavirus infections within one hour at a near 100 per cent success rate.<sup>56</sup> The research allowed the government to conduct thousands of tests a day from the early stages of the outbreak.<sup>57</sup>

Several companies in other sectors also redirected resources toward medical devices in response to the government's call. On 3 April, VinFast, a leading carmaker in Vietnam, decided to produce ventilators and thermometers for the Vietnamese market.<sup>58</sup> The company made use of its research centres, car factories, and supply chains to produce medical devices licensed by Medtronic—an American medical technology company.<sup>59</sup> The contribution of companies such as VinFast reduced Vietnam's dependence on imported medical supplies, in short supply during the pandemic.

### C. Economics and Finance

The Covid-19 epidemic adversely affected Vietnam's economy. The GDP growth rate for the first quarter of 2020 was 3.8 per cent and was expected to fall to 3–4 per cent in 2020 compared to the forecasted rate of 6.5 per cent before the epidemic.<sup>60</sup> The unemployment rate in the first quarter of 2020 increased to 2.02 per cent from 1.9 per cent in the fourth quarter of 2019,<sup>61</sup> partly caused by lockdowns and related measures.

<sup>56</sup> “Test Kit for SARS-Cov-2: A Success from Different Perspectives,” Intellectual Property Office of Vietnam, accessed 5 May 2020, [http://www.noip.gov.vn/tin-tuc-su-kien/-/asset\\_publisher/7xsbFqhcDAV/content/bo-kit-xet-nghiem-virus-sars-cov-2-thanh-cong-tu-nhieu-mui-giap-cong-](http://www.noip.gov.vn/tin-tuc-su-kien/-/asset_publisher/7xsbFqhcDAV/content/bo-kit-xet-nghiem-virus-sars-cov-2-thanh-cong-tu-nhieu-mui-giap-cong-).

<sup>57</sup> Robyn Klingler-Vidra, Ba Linh Tran, and Ida Uusikyla, “Testing Capacity: State Capacity and COVID-19 Testing,” *Global Policy Journal*, 9 April 2020, <https://www.globalpolicyjournal.com/blog/09/04/2020/testing-capacity-state-capacity-and-covid-19-testing>.

<sup>58</sup> “Vingroup to Produce Ventilator and Thermometers,” VinFast Corporation, accessed 5 May 2020, <https://vinfast.vn/en/node/489>.

<sup>59</sup> “Medtronic Provides Ventilator Progress Update,” Medtronic, accessed 5 May 2020, <http://newsroom.medtronic.com/news-releases/news-release-details/medtronic-provides-ventilator-progress-update>.

<sup>60</sup> “Overview of the World Bank in Vietnam,” The World Bank, last modified 27 April 2020, <https://www.worldbank.org/en/country/vietnam/overview>.

<sup>61</sup> “The Socio-Economic Figures of the First Quarter of 2020 of Vietnam,” General Statistics Office of Vietnam, accessed 10 May 2020, <http://www.gso.gov.vn/default.aspx?tabid=403&idmid=&ItemID=19558>.

Although the government of Vietnam prioritized public health over economic growth, it was well prepared for restarting the economy once the epidemic was under control. On 4 March 2020, the prime minister issued Directive No. 11/CT-TTg, implementing urgent measures to support the business community. The government offered a package of VND 250 trillion (CAD 15 billion) in preferential credit to affected businesses and a package of VND 30 trillion (CAD 1.8 billion) providing tax breaks, delaying tax payments, and delaying land-use fees for businesses.<sup>62</sup> On the other hand, the directive requires governmental authorities to strictly oversee the market to prevent smuggling and hoarding.<sup>63</sup>

For companies that needed foreign experts in their production facilities in Vietnam, the government made exceptions to the quarantine requirements, with conditions. For example, it waived the quarantine rule for 200 highly-skilled Samsung employees from South Korea on the condition that they tested negative for Covid-19 by South Korean authorities and were strictly supervised by the Vietnamese authorities for fourteen days after arriving in Vietnam.<sup>64</sup> This flexible measure allowed Samsung to continue its business operations while mitigating the risk of allowing new international arrivals.

The government also provided a package worth VND 62 trillion (CAD 3.75 billion) to support employers facing financial difficulties, household businesses, laid-off workers who were not eligible for unemployment benefit, and poor households, among others.<sup>65</sup> In addition, non-state actors have actively assisted the government in mitigating the adverse effect of the epidemic on vulnerable communities. Many corporations and individuals have donated intensive care units, ventilators, and personal protective equipment to hospitals. Thousands of free meals and drinks were sent to front-line workers. Some corporations, individuals, and the Vietnam Father Front also initiated automated machines, which are called rice ATMs, providing free rice to the poor in several provinces.<sup>66</sup> Many groups also provided food and clothes to those suffering financial hardship due to Covid-19. These measures helped thousands of people amid the lockdowns in particular and the epidemic in general.

<sup>62</sup> Prime Minister's Directive about Fighting against Covid-19 Epidemic, 4 March 2020, No. 11/CT-TTg at sec. II.1.

<sup>63</sup> Prime Minister's Directive about Fighting against Covid-19 Epidemic, at sec. II.3.a.

<sup>64</sup> Tomoya Onishi, "Vietnam Gives Samsung a Pass on Tough Travel Restrictions," *Nikkei Asian Review*, 21 April 2020, <https://asia.nikkei.com/Economy/Vietnam-gives-Samsung-a-pass-on-tough-travel-restrictions>.

<sup>65</sup> Resolution of the Government on Assistance of People Affected by Covid-19 Epidemic, 9 April 2020, No. 42/NQ-CP at sec. II.

<sup>66</sup> Xuan Quynh Nguyen, "Rice ATMs' Dispense Free Food to Out-of-Work Vietnamese," *Bloomberg*, 24 April 2020. <https://www.bloomberg.com/news/articles/2020-04-24/-rice-atms-dispense-free-food-to-out-of-work-vietnamese>.

## D. International Cooperation and International Aids

Since the beginning of the epidemic, Vietnam has been actively cooperating with the World Health Organization and other countries in exchanging information, samples, medical supplies, and experience in dealing with Covid-19. Vietnam also donated millions of medical masks to China, the United States, European countries, and other members of ASEAN.<sup>67</sup> These efforts highlight the international responsibility and solidarity between Vietnam and other countries during the pandemic.

In addition, in its capacity as chair of ASEAN, Vietnam has proposed to cooperate with other members to collectively fight Covid-19 in the region, introducing measures such as a regional fund for responding to the pandemic.<sup>68</sup> ASEAN also issued a Declaration of the Special Summit on Corona Virus Disease 2019 on 14 April 2020, expressing the members' serious concerns about the spread of the virus.<sup>69</sup> The organization agreed to introduce measures to stimulate the regional economy, supporting people and the business community, especially the vulnerable and small and medium-sized enterprises.<sup>70</sup>

## 5. Evaluation of the Response and Challenges Moving Forward

In our introduction, we noted that the Covid-19 pandemic was one of the most profound threats to Vietnam since the end of the American War in 1975. It was a serious challenge for the government. Other societies in the region, such as Taiwan, with political contexts different from Vietnam, also managed to contain Covid-19, at least in its early stages. Yet despite its proximity to the original epicentre of the outbreak and its economic ties with China, Vietnam managed to achieve significant success. Here, we note four important observations that are unique to Vietnam's response.

<sup>67</sup> See, for example, James Pearson, "Vietnam Challenges China's Monopoly on Virus Diplomacy" *Reuters*, 9 April 2020, <https://www.scmp.com/news/asia/southeast-asia/article/3079380/vietnam-donates-over-1-million-masks-europe-and-southeast>; and Nguyen Dieu Tu Uyen, "Vietnam Gives the U.S. 250,000 Locally Made Medical Masks," *Bloomberg*, 16 April 2020, <https://www.bloomberg.com/news/articles/2020-04-16/vietnam-to-give-the-u-s-200-000-locally-made-medical-masks>.

<sup>68</sup> "Prime Minister: Vietnam Keeps Supporting Other Countries in Dealing with the Pandemic," Ministry of Health of Vietnam, accessed 10 May 2020, [https://moh.gov.vn/hoat-dong-cua-lanh-dao-bo/-/asset\\_publisher/TW6LTp1ZtwaN/content/thu-tuong-viet-nam-se-tiep-tuc-ho-tro-cac-nuoc-co-dich-benh](https://moh.gov.vn/hoat-dong-cua-lanh-dao-bo/-/asset_publisher/TW6LTp1ZtwaN/content/thu-tuong-viet-nam-se-tiep-tuc-ho-tro-cac-nuoc-co-dich-benh).

<sup>69</sup> "Declaration of the Special Summit on Corona Virus Disease 2019," ASEAN, 14 April 2020, <https://asean.org/storage/2020/04/FINAL-Declaration-of-the-Special-ASEAN-Summit-on-COVID-19.pdf>, at sec. 2.

<sup>70</sup> "Declaration of the Special," at sec. 9.iv.

First, while prioritizing public health over economic considerations, Vietnam managed to protect both—keeping the public health threat to a minimum while mitigating the economic fallout. Second, Vietnam has been well prepared for fighting against contagious diseases since the SARS outbreak in 2003, and the government immediately introduced strict measures to prevent the spread of Covid-19 when it emerged in China. Third, the legal framework specifies the roles of the central government and local governments to avoid any bureaucratic delays in making decisions in an epidemic. Fourth, Vietnam was able to achieve these objectives by combining coercive means, such as mandatory quarantine in government-run camps, with deliberate action, public education, effective governance, and the provision of assistance to those in need.

Vietnam's response shows that, in the context of a public health crisis, public trust—and the legitimacy of a government in such challenges times—is a function of a working relationship between the government and the people, one based on open and accurate information, evidence-based precautionary measures, and effective coordination with the community and the private sector. There were no demonstrations or strikes in Vietnam criticizing the government's efforts to contain the virus. Instead, the government won the public trust and earned the largely voluntary compliance of the people, who donated their funds to support the government's efforts.

In the years ahead, with more hindsight, we might find flaws in Vietnam's response that aren't apparent today. It also remains to be seen how this global crisis will unfold, but Vietnam's achievements signalled that the country was on the right track to contain its spread while meeting its economic goals. These achievements have strengthened the public trust in the government and enhanced the confidence of foreign investors,<sup>71</sup> transforming a global challenge into a potential opportunity for Vietnam.

<sup>71</sup> James Pearson and Phuong Nguyen, "With Zero Coronavirus Deaths So Far, Vietnam Eyes Growing Post-Pandemic Business," *Reuters*, 7 May 2020, <https://globalnews.ca/news/6919743/vietnam-zero-coronavirus-deaths-business/>.

# Spread of Information versus Spread of Virus

China, Taiwan, and Hong Kong

*Guoguang Wu\**

## 1. Introduction

The Covid-19 global pandemic would have been even more disastrously threatening to human beings around the world were it not for the fact that the information revolution had already transformed the world into a so-called global village. Yes, globalization increases the possibility of virus transmission across various borders, as the Covid-19 pandemic has tragically demonstrated. The spread of the relevant information, however, can help rouse personal alert and collective alarm from the very beginning when virus-human contamination occurs for the first time. The spread of such information, therefore, is among the critical factors that enable human societies to effectively prevent the massive spread of a deadly virus.

Three Chinese societies, namely, China, Taiwan, and Hong Kong, in their different performances during the first months of the Covid-19 crisis, have revealed how the free or unfree flow of information via mass media and social media critically affects a society's ability to fight the pandemic—this is what this chapter explores. In doing a comparative study of the three Chinese societies in this regard, this chapter will show how the initial outbreak of SARS-CoV-2 in China is to a great extent attributed to the harsh and often effective governmental censorship of media communication. In contrast, it will also show how both Taiwan, as a democratic society with a high degree of free flow of information, and Hong Kong, where citizens have residual freedoms—primarily freedom to information—have achieved remarkable effectiveness in containing the spread of Covid-19 in their jurisdictions.

\* Professor of Political Science and History, and China Chair at Centre for Asia-Pacific Initiatives, University of Victoria (<https://orcid.org/0000-0002-5506-2853>).



This chapter does not attempt to provide a comprehensive study of the three jurisdictions efforts to fight the pandemic, which are considered from different perspectives elsewhere in this collection.<sup>1</sup> Instead, this chapter will provide a snapshot of the early days of the Covid-19 pandemic in the three cases and serve as a starting point for future research. It will, however, attempt to critically reflect on the experience of societies at or near the epicentre of the global crisis in a way that highlights, from a political science perspective, the relevance of information flow to human ability in fighting pandemics and its lessons for the governance of public health emergencies.

## 2. China: Information Control as the Political Origin of the Pandemic

The epidemiological origin of Covid-19 remained mysterious as of May 2020, despite the fact that more than one hundred days had passed since the Chinese government declared an outbreak on 21 January 2020. It is a historical fact, however, that China was the first country in the world to experience the outbreak, far prior to the World Health Organization (WHO) giving the name “Covid-19” to the disease. At the time the disease emerged, it was called the “novel coronavirus pneumonia,” while it was popularly referred to by both Chinese population and China’s government-sponsored media as the Wuhan pneumonia, simply because of the first outbreak in Wuhan, a metropolitan city in central China.

The mystery around the origin of the virus per se is evidence of the Chinese government’s control of information flow. Because of such control, even the chronological starting point of the pandemic remains unknown. Some said that it started in November 2019, other reports referred to 1 December, and still others disclosed that the Chinese governmental record confirmed the first case on 8 December.<sup>2</sup> In any case, the Chinese government did not make public announcements regarding the initial appearance of the disease until 21 January 2020. Instead, it took great efforts to silence any possible warning of the outbreak.

On 30 December 2019, Dr. Li Wenliang, an ophthalmologist at the Central Hospital of Wuhan, saw a test report of a patient indicating symptoms highly

<sup>1</sup> See Xu and Liu, Chapter 2; Chang and Lin, Chapter 3; and Ho and Cheung, Chapter 17, all in this volume.

<sup>2</sup> See, respectively, “武漢肺炎大事記：從全球到台灣，疫情如何發展？ [Chronology of the Wuhan pneumonia],” *The Reporter*, accessed 4 May 2020, <https://www.twreporter.org/a/2019-ncov-epidemic>; “Yixue fenxi zhi bingdu ke youxiao renchuanren [Medical analysis pointed out that the virus is effectively human-to-human transmission],” *i-Cable*, 25 January 2020, <http://cablenews.i-cable.com/ci/videopage/news/16260>; “疾管署坦承 新冠肺炎入侵台灣 可能比一般認知要早 [The novel coronavirus pneumonia invaded Taiwan],” *Common Health*, 5 April 2020, <https://www.commonhealth.com.tw/article/article.action?nid=81306>.

similar to the Severe Acute Respiratory Syndrome (SARS) coronavirus, an epidemic that caused a public health crisis in China while spreading to Hong Kong, Taiwan, and many other countries in 2003. Considering that many of his former schoolmates were clinical physicians, he disclosed the information in his WeChat groups.<sup>3</sup> At midnight of the same day, the Wuhan municipal government officials in charge of public health affairs summoned Dr. Li for a warning.<sup>4</sup> On 3 January 2020, immediately after the new year holidays, Dr. Li appeared at the police station and was “admonished” (this is the official term used by the Chinese authorities regarding what the police did to Dr. Li); the statement of admonishment stated that “we solemnly admonish you: if you stubbornly do not repent and continue to carry out illegal activities, you will be punished by law! Do you understand?”, to which Dr. Li had to answer “I understand” and sign with a fingerprint.<sup>5</sup>

Seven other physicians were at the same time also admonished by the Wuhan police.<sup>6</sup> Dr. Ai Fen, Director of the Emergency Department of the Central Hospital of Wuhan, revealed in an interview publicized on 10 March 2020 that she had received her first case of the disease on 18 December 2019. She was also warned by the Communist Party officials at her hospital after she sent a WeChat message on 30 December regarding the potential danger of an epidemic.<sup>7</sup> The messages sent by Drs. Li and Ai were quickly deleted by the WeChat administrators.<sup>8</sup>

These two cases are neither random nor due to internet companies’ policies. According to a research report by Citizen Lab at the University of Toronto, YY, a live-streaming platform in China, began to censor keywords related to the coronavirus outbreak on 31 December 2019, a day after the two doctors tried to warn the public about the then-unknown virus. Most of the newly added forty-five keywords on the censor list were related to the disease, including *Wuhan pneumonia*, *unknown virus*, *SARS*, *P4 Lab*, and many more.<sup>9</sup> Journalists reported

<sup>3</sup> “武漢肺炎大事記：從全球到台灣，疫情如何發展？ [ChronologyoftheWuhanpneumonia].”

<sup>4</sup> “还原肺炎疫情关键七周：中国为何未能及时控制病毒传播 [Returning to the original seven weeks of the pneumonia: Why was China not able to control spread of virus in time?], *The New York Times* China, 3 February 2020, <https://cn.nytimes.com/china/20200203/china-coronavirus/>.

<sup>5</sup> “当我们哀悼李文亮时-我们究竟在哀悼什么 [What are we mourning when we mourn Li Wenliang?], *The Reporter*, 6 February 2020, <https://www.twreporter.org/a/2019-ncov-lwl-matters>. Dr. Li, 34 years old, was then infected with SARS-CoV-2 and subsequently died on 6 February 2020.

<sup>6</sup> “当我们哀悼李文亮时-我们究竟在哀悼什么 [What are we mourning when we mourn Li Wenliang?].”

<sup>7</sup> “发哨子的人 [The person who gave whistles to the whistle-blowers], *Matters*, 9 March 2020, <https://matters.news/@2020Era/%E5%8F%91%E5%93%A8%E5%AD%90%E7%9A%84%E4%BA%BA-bafyreihrpvzudkmtakoxvquhhw75ajqvhn40xb4pges3od5rqusa436ba>.

<sup>8</sup> “武漢肺炎大事記：從全球到台灣，疫情如何發展？ [ChronologyoftheWuhanpneumonia].”

<sup>9</sup> Lotus Ruan, Jeffrey Knockel, and Masashi Crete-Nishihata, “Censored Contagion: How Information on the Coronavirus Is Managed on Chinese Social Media,” *The Citizen Lab*, 3 March 2020, <https://citizenlab.ca/2020/03/censored-contagion-how-information-on-the-coronavirus-is-managed-on-chinese-social-media/>.

that on 30 December 2019, the Wuhan Municipal Commission for Hygiene and Health, a department of the Wuhan government, issued an urgent notice regarding the “pneumonia with unknown causes” which requested strict control of information regarding the disease.<sup>10</sup>

During these critical days, the virus spread quickly to many regions of China and beyond. In mid-January, cases of the disease started to appear in China’s neighbour countries, first in Thailand and Japan, then South Korea, with all of those infected having come from Wuhan or having had recent travel history to the city.<sup>11</sup> On 23 January, Wuhan, with a metropolitan population of 12 million, was entirely locked down as the epidemic there went wild. Other major cities in Hubei Province, of which Wuhan is the provincial capital, followed suit.

By 20 January 2020, for unknown reasons, the Chinese government’s response to the epidemic was to continue to delay informing the public of the outbreak. In particular, it denied human-to-human transmission of the virus.<sup>12</sup> This delay appears to be the primary cause of the disastrous spread of the virus. This chapter identifies this policy response as the political origin of the global pandemic.

The government’s censorship of information regarding the epidemic was hardly relaxed after the national leadership began to take public actions fighting the spread of the virus. In late January and early February, for example, the regime detained, punished, and/or admonished several hundreds of citizens nationwide, including many medical workers, by charging them with “fabricating rumors to stir social order” simply for disclosing cases of the disease in their localities in their WeChat group communications.<sup>13</sup>

These actions accorded with the national leadership’s instructions. On 25 January 2020, The Politburo Standing Committee (PSC) of the Chinese Communist Party (CCP), the supreme decision-making body of China, held its first meeting to discuss the “novel coronavirus pneumonia.” After this meeting, the propaganda heads nationwide attended an online meeting on 31 January for “strengthening propaganda and guidance regarding the coronavirus pneumonia” for “providing forceful support in terms of public opinion to the battle against the disease.”<sup>14</sup> In his speech on 3 February, Xi Jinping, the CCP’s party

<sup>10</sup> “武漢肺炎大事記：從全球到台灣，疫情如何發展？ [ChronologyoftheWuhanpneumonia].”

<sup>11</sup> “武漢肺炎大事記：從全球到台灣，疫情如何發展？ [ChronologyoftheWuhanpneumonia].”

<sup>12</sup> Only on 20 January 2020, as national leaders gave instructions to publicize the epidemic, Dr. Zhong Nanshan, a leading expert in China on the topic, changed his tune by admitting human-to-human transmission occurred.

<sup>13</sup> “还原肺炎关键七周：中国为何未能及时控制病毒传播？ [Returning to the original seven weeks of the pneumonia: Why China was not able to control spread of virus in time?]; “对276条被处罚谣言的分析 [An analysis of 276 rumors that got penalized],” Center for New Media, Beijing Normal University, 15 March 2020, [https://www.sohu.com/a/381017601\\_312708](https://www.sohu.com/a/381017601_312708).

<sup>14</sup> “黄坤明在专题视频会议上强调 为打赢疫情防控阻击战提供有力舆论支持 [At a special video meeting Huang Kunming emphasized to provide propaganda support to the war against the epidemic],” Xinhua Wang, 1 January 2020, [http://www.xinhuanet.com/politics/leaders/2020-01/31/c\\_1125516836.htm](http://www.xinhuanet.com/politics/leaders/2020-01/31/c_1125516836.htm).

chief and China's head of state, further emphasized control of public opinion by listing it as the third priority in dealing with the crisis—with fighting the epidemic as the first, maintaining social stability the second, and economic stability the fourth.<sup>15</sup> The relevant Chinese authorities on 25 January issued a public notice on “governing rumors relevant to the novel coronavirus pneumonia,” including a stipulation that a violator of the notice would be sentenced to the maximum seven years of imprisonment.<sup>16</sup>

The crackdown on information spread coincided with the spread of Covid-19 to many places in China in the days that followed. According to the Research Center on New Media at the Beijing Normal University, among those cases in which citizens were detained or admonished in late January and early February 2020 due to their spread of “rumors” regarding the epidemic, 74 per cent of the “rumors” turned to be true within three days of the punishment, implying that the “rumor” correctly disclosed the situation of the epidemic in the locality. In an extreme case, within three days of the “rumor”-spreader being punished by police, 1,273 cases of Covid-19 were confirmed in the city.<sup>17</sup>

The research report by Citizen Lab at the University of Toronto supplements these findings. It particularly highlights how WeChat, China's most popular chat app with over a billion monthly active users, broadly censored coronavirus-related content in late January and February 2020 and how it expanded the scope of censorship along with the spread of the virus. Unsurprisingly, censored content included criticism of the Chinese government's handling of the outbreak, speculative and factual information on the epidemic, and references to Dr. Li Wenliang. Many of the censorship rules, however, are even broader, effectively blocking neutral information, including names for the virus or sources of information about it; they even restrict vital communication related to disease information and prevention, including communication among doctors who use WeChat to obtain professional knowledge from their peers.<sup>18</sup> The Citizen Lab report argues that “because of social media's integral role in Chinese society and its uptake by the Chinese medical community, systematic blocking of general communication on social media related to disease information and prevention risks

<sup>15</sup> Xi Jinping, “在中央政治局常委会会议研究应对新型冠状病毒肺炎疫情工作时的讲话 [The speech at the CCP Politburo Standing Committee's meeting on dealing with the novel coronavirus pneumonia epidemic],” *Qiushi*, 15 February 2020, [http://www.qstheory.cn/dukan/qs/2020-02/15/c\\_1125572832.htm](http://www.qstheory.cn/dukan/qs/2020-02/15/c_1125572832.htm).

<sup>16</sup> “擋掉上百關鍵字、自封「全球抗疫典範」，中共如何打武漢肺炎輿論戰？ [Howdoesthe CCP fight in the public-opinion war regarding the Wuhan pneumonia?],” *The Reporter*, 3 March 2020, <https://www.twreporter.org/a/covid-19-internet-censorship-in-china-banned-keyword>.

<sup>17</sup> “还原肺炎关键七周：中国为何未能及时控制病毒传播？ [Returning to the original seven weeks of the pneumonia: Why China was not able to control spread of virus in time?].”

<sup>18</sup> Lotus Ruan, Jeffrey Knockel, and Masashi Crete-Nishihata, “Censored Contagion: How Information on the Coronavirus is Managed on Chinese Social Media.”

substantially harming the ability of the public to share information that may be essential to their health and safety.”<sup>19</sup>

Censored content even included online messages sent by patients and their families to appeal for help. It is estimated that on 5 February there were 195,000 messages of this kind. On the miniblog set up by Xiao Wu for disseminating such messages, however, more than 3,000 messages were deleted overnight by the government internet administrators, leaving only 142.<sup>20</sup>

The Chinese authoritarian regime is notorious for its tight control of information, its extremely low degree of transparency of governance, and its effective censorship of mass communications, all set against the background of the nation being deeply involved in the global information revolution, with the largest numbers of internet and cellphone users in the world. The regime’s arbitrary decision to censor information applied not only to political matters but also to whatever it deemed improper for whatever considerations, including information regarding public health. In fact, the Chinese government took similar actions seventeen years ago during the SARS crisis in 2003, creating a disaster in China, Hong Kong, Taiwan, and many other countries. As we will see, those who still remembered this lesson were poised to do much better in 2020—specifically, those in Taiwan and Hong Kong.

### 3. Taiwan: Informed Citizens with Distrust on China as a Social Base of Preventive Measures

By 9 May 2020, at the time of writing, 440 cases of Covid-19 had been confirmed in Taiwan.<sup>21</sup> For this island with a population of 23 million, this is a low infection rate, especially considering Taiwan’s geographic proximity to and economic integration with China. That is why many in the world would agree to an observation that “Taiwan sets gold standard on epidemic response to keep infection rates low”<sup>22</sup> and why experts began to explore how Taiwan has been able to do so.<sup>23</sup>

<sup>19</sup> Lotus Ruan, Jeffrey Knockel, and Masashi Crete-Nishihata, “Censored Contagion: How Information on the Coronavirus is Managed on Chinese Social Media.”

<sup>20</sup> “擋掉上百關鍵字、自封「全球抗疫典範」，中共如何打武漢肺炎輿論戰？[How does the CCP fight in the public-opinion war regarding the Wuhan pneumonia?].”

<sup>21</sup> “從武漢到世界——COVID-19（武漢肺炎）疫情即時脈動 [From Wuhan to the world],” *The Reporter*, accessed 9 May 2020, <https://www.twreporter.org/i/covid-2019-keep-tracking-gcs>. The confirmed cases of Covid-19 worldwide by 9 May 2020 totalled 3,959,249, including the apparently unreliable statistics about China (82,887), which are widely seen as much lower than the real infection rate in the country.

<sup>22</sup> Nicola Smith, “Taiwan sets gold standard on epidemic response to keep infection rates low,” *The Telegraph*, 6 March 2020.

<sup>23</sup> See Chang and Lin, Chapter 3, this volume.

A report published in the *Journal of the American Medical Association* attributes Taiwan's success to its proactive and comprehensive containment measures, which are facilitated by the national healthcare infrastructure and the use of digitalized patient records and related big data.<sup>24</sup> A sociologist at Harvard University argues that “the Taiwanese collective memory of the 2003 SARS outbreak and the country's democratic developmental and welfare state explain Taiwan's swift and effective response to the Covid-19 outbreak.”<sup>25</sup>

Comprehensive explanations are obviously necessary, but among various factors that have helped, this brief section emphasizes those relevant to information spread in enabling Taiwan to successfully combat the Covid-19 pandemic. Such factors are especially important in Taiwan because it is in a truly unique political circumstance in its domestic governance and global contexts. Beijing claims Taiwan a part of China, denies Taiwan's sovereignty over its own territories, and isolates Taiwan in international communities, including blocking Taiwan's entry into the WHO and other international organizations. Ironically enough, growing distrust of China helped Taiwan to avoid the rapid spread of Covid-19 on the island, and such political distrust of China works, in large measure, because of its approach to information freedom and its democratic institutional support.

The first case of Covid-19 appeared in Taiwan on 21 January 2020; the patient was a Taiwanese businesswoman who worked in Wuhan. However, as early as 31 December 2019, the Taiwan authorities were already requiring arrivals from Wuhan be subject to health screenings.<sup>26</sup> When the Chinese government eventually disclosed the epidemic, the Taiwan authorities immediately upgraded its emergency status to a higher level,<sup>27</sup> even though the WHO still insisted that the epidemic was not severe enough to be considered a worldwide public health emergency.<sup>28</sup> By 1 February, Taiwan had proactively implemented travel restrictions on all passengers coming from the mainland, contradicting the WHO insistence that travel bans were unnecessary. Taiwan did so at a

<sup>24</sup> C. Jason Wang, Chun Y. Ng, and Robert H. Brook, “Response to Covid-19 in Taiwan: Big Data Analytics, New Technology, and Proactive Testing,” *The Journal of the American Medical Association* 323(14): 1341–1342, <https://doi-org.ezproxy.library.uvic.ca/10.1001/jama.2020.3151>.

<sup>25</sup> Ya-wen Lei, “National health insurance, health policy, and infection control: insights from Taiwan,” *Contexts: Sociology for the Public*, accessed 4 May 2020, <https://contexts.org/blog/the-global-coronavirus-epidemic-commentary-on-east-asias-response/#lee>.

<sup>26</sup> Laignee Barron, “What We Can Learn from Singapore, Taiwan and Hong Kong about Handling Coronavirus,” *Time*, 13 March 2020, <https://time.com/5802293/coronavirus-covid19-singapore-hong-kong-taiwan/>.

<sup>27</sup> “武漢肺炎大事記：從全球到台灣，疫情如何發展？[ChronologyoftheWuhanpneumonia].”

<sup>28</sup> The WHO announced the Covid-19 pandemic as late as 12 March; many of those countries that followed the WHO to announce the public health emergency, including the United States, then experienced an outbreak of the disease and a crisis.

“significant economic cost,” as it relies on China as its biggest trading partner and source of tourists.<sup>29</sup>

Taiwan’s mass media and social media immediately mobilized themselves to convey the information regarding the Wuhan pneumonia; they did not encounter any restrictions, control, or censorship from the government. Instead, they tried to point out problems in public health governance, monitored the authorities’ efforts, and criticized the pertinent flaws. For example, a website on 9 March 2020 found fault in the operation of the central command centre for epidemics. The director of the centre, who was Health Minister of Taiwan and enjoys high popularity due to his outstanding performance during the Covid-19 crisis, quickly responded with two press conferences at which he not only answered questions from the press but also disseminated information on pertinent decisions to remedy the problems.<sup>30</sup> This, I would argue, exemplifies a beneficial interaction between mass media and governmental authorities on measures to fight the pandemic, contrasting with China’s governmental repression of the media during crisis management.

The balance of global public opinion appears to hold that the key to Taiwan’s success in fighting the pandemic “has been the decision to respond aggressively from the outset.”<sup>31</sup> Taiwan’s president, however, in talking about the issue, emphasizes “transparent information” in her country and celebrates Taiwan’s “informed citizens” who “have done their part.”<sup>32</sup> Democracy cannot guarantee that citizens are sufficiently informed to make wise decisions on public affairs,<sup>33</sup> but in this circumstance, it did help Taiwanese citizens to be well informed, according to my analysis, in at least three senses.

First, Taiwan had conducted a presidential election in January 2020, as the threat of Covid-19 was emerging. Many experts agreed that Democratic Progressive Party (DPP) gained a landslide victory mainly because of the social mentality of anti-CCP infiltration into Taiwan.<sup>34</sup> In other words, as informed

<sup>29</sup> Laignee Barron, “What We Can Learn from Singapore, Taiwan and Hong Kong About Handling Coronavirus.”

<sup>30</sup> “武漢肺炎大事記：從全球到台灣，疫情如何發展？ [Chronology of the Wuhan pneumonia].”

<sup>31</sup> Laignee Barron, “What We Can Learn from Singapore, Taiwan and Hong Kong About Handling Coronavirus.”

<sup>32</sup> Tsai Ing-Wen, “Taiwan President: How My Country Prevented a Major Outbreak of COVID-19,” *Time*, 16 April 2020, <https://time.com/collection/finding-hope-coronavirus-pandemic/5820596/taiwan-coronavirus-lessons/>.

<sup>33</sup> Arthur Lupia and Mathew D. McCubbins, *The Democratic Dilemma: Can Citizens Learn What They Need to Know?* (New York: Cambridge University Press, 1998).

<sup>34</sup> See, for example, Ralph Jennings, “Taiwanese Vote in Presidential Election Dominated by China Relations,” *VOA*, 12 January 2020, <https://www.voanews.com/east-asia-pacific/taiwanese-vote-presidential-election-dominated-china-relations>; Stanley Kao, “Why Taiwan’s success with elections terrifies Beijing,” *The Washington Post*, 12 January 2020, <https://www.washingtonpost.com/opinions/2020/01/12/why-taiwans-success-with-elections-terrifies-beijing/>; and Connor Fairman, “When Election Interference Fails,” *Net Politics*, Council on Foreign Relations, 29 January 2020, <https://www.cfr.org/blog/when-election-interference-fails>.

citizens, Taiwanese voters knew well about the life-threatening consequences of information suppression by the Chinese regime. When voters heard the first reports of the Wuhan pneumonia, they were immediately on high alert because of what a previous quotation refers to as their “collective memory” of the pains in 2003 due to the Chinese regime’s withholding of critical information during the SARS epidemic. It also helps to explain why the SARS experience did not help the Chinese populace in 2019 and 2020 as it did in Taiwan: Without information freedom, there is no such collective memory. The historical record has been suppressed by the authoritarian regime through communication control and information censorship.

Second, Taiwan is not a member of the WHO, which is not Taiwan’s choice but is due to China’s pressure. This unfairness can reduce Taiwanese citizens’ respect for the WHO, which, ironically, did not reduce Taiwan’s capacity to fight the Covid-19 pandemic but helped the island country to avoid being misled by the WHO’s hesitation in declaring Covid-19 a global pandemic.

Third, Taiwan’s rapid responses to Covid-19 proved effective, but, as pointed out earlier, they came with a significant economic cost. Without the powerful demonstration in the January election of a popular preference of keeping a distance from China economically, it would have been hard for the Taiwanese government to move so quickly and decisively in the early weeks of Covid-19.

#### **4. Hong Kong: Social Self-Protection with Residual Freedom to Information Dissemination**

The combination of a collective memory of SARS and social distrust of China also helps to explain the relatively well-controlled situation of Covid-19 in Hong Kong, but this Special Administrative Region (SAR) of China did so in sociopolitical circumstances fundamentally different from Taiwan’s. It is not the effective governmental responses supported by informed citizens that left this international transport hub with millions of mainland visitors, in a local newspaper’s words, “relatively unscathed by the first wave of the Covid-19 outbreak.”<sup>35</sup> Rather, in my analysis, Hong Kong’s relative success is mainly due to social autonomy and residual civic freedoms that citizens there cultivate to protect themselves, a circumstance in which political protests served as an unusual mechanism to facilitate the spread of information.

<sup>35</sup> “To mask or not to mask: WHO makes U-turn while US, Singapore abandon pandemic advice and tell citizens to start wearing masks,” *South China Morning Post*, 4 April 2020. There were 1,044 confirmed cases in Hong Kong as of 9 May 2020. See “Coronavirus Cases,” *Worldometer*, accessed 9 May 2020, <https://www.worldometers.info/coronavirus/country/china-hong-kong-sar/>.



When the coronavirus jumped the border from China into Hong Kong on 24 January 2020,<sup>36</sup> Hong Kong had been in social turmoil for months, and the SAR government had already become extremely unpopular due to its initiation of a controversial legislative bill of extradition and, when millions of residents protested against the bill, its violent crackdown over protesters. The government took no action in the first weeks to deal with the spread of the virus, but citizens did. According to a local observer, “as soon as news of a novel strain of coronavirus in mainland China started to spread, most people [in Hong Kong] decided not to wait for official guidelines and began wearing masks, minimising social outings, and washing hands and homes with increased frequency and thoroughness.”<sup>37</sup> Six weeks later, the city of 7.5 million people had fewer than 110 cases of Covid-19.<sup>38</sup> Some journalists attributed this early effectiveness of pandemic control to the social awareness that arose “in large part thanks to the scarring experience of SARS in 2003”<sup>39</sup> and marked that “the strong community response has worked.”<sup>40</sup>

Since the return of Hong Kong’s sovereignty to China in 1997, the former British colony has been experiencing the huge shrinking of civic freedoms alongside the aggressive growth of Beijing’s interferences with its promised institutional arrangement of “one country, two systems” between China and the SAR. The attempt at legislation on extradition was just a new move in this regard. Mobilizing the residual freedom they still had in social communication and political assembly, Hong Kong citizens started a series of protests in June 2019 which lasted till February 2020, with frequent mass demonstrations that often attracted participants of more than a million. To combat the government’s violent crackdown, the protesters developed a strategy of “be water,” referring to their high fluidity in gathering, inclusion, and information dissemination.<sup>41</sup> Social protests, therefore, also worked as an effective mechanism among citizens for practicing freedom of communication.

<sup>36</sup> Jessie Yeung, “Two weeks of zero local infections: How Hong Kong contained its second wave of Covid-19,” *CNN*, 5 May 2020, <https://www.cnn.com/2020/05/05/asia/hong-kong-coronavirus-recovery-intl-hnk/index.html>.

<sup>37</sup> Ilaria Maria Sala, “Covid-19 was a chance for a reset in Hong Kong. Instead, the crackdown continues,” *The Guardian*, 4 May 2020, <https://www.theguardian.com/commentisfree/2020/may/04/covid-19-reset-hong-kong-crackdown-continues-democracy>.

<sup>38</sup> Helen Davidson, “‘We can’t let up’: Hong Kong battles complacency amid new wave of Covid-19,” *The Guardian*, 27 March 2020, <https://www.theguardian.com/world/2020/mar/27/we-cant-let-up-hong-kong-battles-complacency-amid-new-wave-of-covid-19>.

<sup>39</sup> Ilaria Maria Sala, “Covid-19 was a chance for a reset in Hong Kong. Instead, the crackdown continues.”

<sup>40</sup> Vivienne Chow, “How people power has flattened the Covid curve in Hong Kong,” *The Interpreter*, 20 March 2020, <https://www.lowyinstitute.org/the-interpreter/two-months-hong-kong-coping-covid-19-now>.

<sup>41</sup> See, for instance, Yamamoto Satoshi, “‘Be water’: Hong Kong protesters learn from Bruce Lee,” *NHK*, 12 November 2019, <https://www3.nhk.or.jp/nhkworld/en/news/backstories/745/>.

Informed citizens also protested to pressure the government into taking measures against the spread of the virus. On 4 February, several thousands of medical workers organized a five-day strike to demand complete closure of the border to mainland China.<sup>42</sup> The government's response was disappointing, as it first refused to seal the border, then agreed to shut all but three checkpoints, and still refused to impose a mandatory quarantine for anyone entering from mainland China.<sup>43</sup> It eventually moved to close the border as late as on March 23.<sup>44</sup> This strike, however, as a Hong Kong resident found, "sent an alarming signal to the public, as medical workers made it clear that the influx of virus carriers and patients from the north could collapse the public healthcare system in Hong Kong."<sup>45</sup>

Curiously enough, the government and citizens in Hong Kong also clashed over the wearing of face masks. In October 2019, the government banned the wearing of a mask in public, not for public health reasons, but as a political measure to prevent protesters from hiding their identity.<sup>46</sup> After the Covid-19 outbreak, however, the administration wasn't willing to budge, maintaining that masks would remain forbidden.<sup>47</sup> But in Hong Kong "people were well aware of the asymptomatic nature of the virus long before it was declared a pandemic," and "the public's distrust in the Hong Kong government and Beijing" led them to turn to medical experts for advice on the relevant issues, including mask-wearing.<sup>48</sup>

"It is not an exaggeration to say that Hong Kong people's spirit of resistance and resilience inspired by the ongoing pro-democracy protests has protected them from the deadly virus," one Hong Kong-based writer concludes in an insightful essay.<sup>49</sup> When the SAR government eventually took action on social distancing, banned public gatherings, these measures not only helped Hong Kong to fight the pandemic but also helped the government to at least temporarily but effectively prevent and control social protests.

<sup>42</sup> Laignee Barron, "'This Shouldn't Be about Politics': Hong Kong Medical Workers Call for Border Shutdown Amid Coronavirus Outbreak," *Time*, 4 February 2020, <https://time.com/5777285/hong-kong-coronavirus-border-closure-strike/>.

<sup>43</sup> Laignee Barron, "The Coronavirus Has Brought Out the Ugly Side of Hong Kong's Protest Movement," *Time*, 19 February 2020, <https://time.com/5784258/hong-kong-democracy-separatism-coronavirus-covid-19/>.

<sup>44</sup> Ilaria Maria Sala, "Covid-19 was a chance for a reset in Hong Kong. Instead, the crackdown continues."

<sup>45</sup> Vivienne Chow, "How people power has flattened the Covid curve in Hong Kong." *See also* Ho and Cheung, Chapter 17, this volume.

<sup>46</sup> Ilaria Maria Sala, "Covid-19 was a chance for a reset in Hong Kong. Instead, the crackdown continues."

<sup>47</sup> Ilaria Maria Sala, "Covid-19 was a chance for a reset in Hong Kong. Instead, the crackdown continues."

<sup>48</sup> Vivienne Chow, "How people power has flattened the Covid curve in Hong Kong."

<sup>49</sup> Vivienne Chow, "How people power has flattened the Covid curve in Hong Kong."

## 5. Conclusion

Human beings have to live with viruses, but the natural existence of viruses does not have to lead to pandemics that may kill thousands or millions of people. The spread of a virus that creates a pandemic is a social phenomenon; when a disease caused by a virus initially occurs, an awareness of the potential danger of the disease turning into an epidemic is among the first elements of containment; the free, fast spread of the relevant information is an indisputable precondition for shaping the social circumstances in which public authorities, social fabrics, and individual citizens start to take substantial actions and measures to prevent the wild spread of the virus. In this sense, the spread of information is critical for blocking the spread of a virus.

Information flow, however, is much more a social and political mechanism than a purely technological one. It always takes place within a given political framework which can, roughly speaking, either block or facilitate information spread in addition to the technological aspects of information flow. China, Taiwan, and Hong Kong happened to represent three different kinds in this regard; this difference alone cannot decide a society's capacity to fight epidemics, but it can be critical, especially at the early stage of an outbreak, to determine a society's fate in a public health crisis.

It is not a secret that the Chinese communist regime, even in its current incarnation embracing globalization, has notorious habits of covering up human disasters and prohibiting media coverage of such events, especially for those who still remember its performance during the 2003 SARS crisis. This chapter has examined how such censorship was forcefully applied in China to the initial spread of information concerning Covid-19 and, accordingly, has argued that the suppression of information is the political origin of the Covid-19 pandemic. By contrast, Taiwan and Hong Kong, both in the economic and cultural orbit of China, have political systems different from that of China; yet both effectively controlled the spread of the virus in their territories in the first few weeks, the collective memory of SARS and free flow of relevant information contributing significantly to their successes. The critical role of information was immediately and fully appreciated when it spread to the two offshore ethnically Chinese societies, in Taiwan by both the government and society where democratic institutions provided fundamental sociopolitical support, and in Hong Kong by citizens, if not yet by the government, in the first few weeks, as residual freedom in information flow and mass protests worked as vital elements to help people protect themselves and to pressure the government to keep information flowing to contain the spread of the virus.

# 6

## Borders and Entry Controls in Asia

Jaclyn L. Neo\* and Darius Lee\*\*

### 1. Introduction

Joseph Carens once wrote: “Borders have guards and the guards have guns.”<sup>1</sup> In this age of Covid-19, borders do not only have guards; many have thermal scanners, healthcare workers, and buses on standby to whisk incoming travellers (if allowed to enter) to quarantine sites. The Covid-19 pandemic shows us the persistence of the territorial state’s claim to near-absolute control over movement within and across borders. When the cluster of severe pneumonia cases was reported in China in January 2020,<sup>2</sup> it was inconceivable that, within two months, borders worldwide would be effectively shut to all visitors. On 11 March 2020, with more than 118,000 confirmed Covid-19 cases in 114 countries and 4,291 deaths, the World Health Organization (WHO) declared a global pandemic.<sup>3</sup> By the end of March, most countries had restricted entry, and some, even exit.

The need for border closures is contested, even among public health specialists.<sup>4</sup> During the 2003 SARS epidemic, borders remained open. A WHO advisory recommended postponing non-essential travel to the Hong Kong Special Administrative Region and parts of China,<sup>5</sup> but most countries, including those in Asia, kept their borders open, resorting only to targeted travel advisories and screening of incoming travellers. The degree to which countries have resorted to movement control within and across borders in 2020 is thus

\* Associate Professor and Director, Centre for Asian Legal Studies, Faculty of Law, National University of Singapore.

\*\* Junior Researcher, Centre for Asian Legal Studies, Faculty of Law, National University of Singapore.

<sup>1</sup> Joseph H. Carens, “Aliens and Citizens: The Case for Open Borders,” *The Review of Politics* 49, no. 2 (1987): 251.

<sup>2</sup> “Pneumonia of unknown cause – China,” World Health Organization (WHO), 5 January 2020.

<sup>3</sup> “WHO Director-General’s opening remarks at the media briefing on COVID-19,” WHO, 11 March 2020.

<sup>4</sup> Shiori Otsuki and Hiroshi Nishiura, “Reduced Risk of Importing Ebola Virus Disease because of Travel Restrictions in 2014: A Retrospective Epidemiological Modeling Study,” *PLoS ONE* 11, no. 9 (2016): 1; Ana L.P. Mateus et al., “Effectiveness of travel restrictions in the rapid containment of human influenza: a systematic review,” *Bulletin of the World Health Organization*, no. 92 (2014): 868.

<sup>5</sup> “Update 19 – China deepens its collaboration to contain SARS, WHO revises its advice to international travellers as new data come in,” WHO, 2 April 2003.

unprecedented. On the one hand, the world is far more connected in 2020 than in 2003. According to the World Bank, international tourism arrivals virtually doubled from 0.7 billion to 1.4 billion worldwide between 2003 and 2018.<sup>6</sup> On the other hand, the response to this global pandemic speaks to the persistence of national territorial sovereignty. This national approach includes measures that sometimes make crude distinctions between citizens and aliens, locals and foreigners, and in some countries, insiders and outsiders. This national response to Covid-19 may in turn foment or aggravate nationalistic passions.

This chapter examines a variety of movement and border control measures in Asia and considers how these responses demonstrate the persistence of territorial sovereignty and the nation-state in a highly globalized world. It situates the discussion within broader debates about borders—open, closed, even, as Shachar puts it, shifting.<sup>7</sup> It then provides a preliminary framework for analyzing movement and border control measures across Asia. This framework employs three binaries for analyzing state control: territoriality (internal/external controls); nationality (citizens/aliens); and directionality (entry/exit). Written at the vanguard of the “fight” against Covid-19, this chapter has its virtues and limitations. While it provides an important contemporary snapshot of current control measures taken in the name of “flattening the curve,”<sup>8</sup> ongoing analysis is required to fully appreciate the long-term impact of these measures, which themselves are quickly evolving. Accordingly, this chapter offers a conceptual framework that we hope will remain relevant, even if the data may be outdated.

## 2. Controlling Borders

Control over borders is an asserted manifestation of state sovereignty, which includes the right to exclude non-nationals from the territory. Some have defended this on the basis of bounded communities’ right of self-definition.<sup>9</sup> Others, however, see open, permeable borders as inevitable.<sup>10</sup> Still, others see open borders as a moral imperative, stressing the equal worth of individuals

<sup>6</sup> “Data: International tourism, number of arrivals,” World Bank, accessed 1 June 2020, <https://data.worldbank.org/indicator/ST.INT.ARVL>.

<sup>7</sup> Ayelet Shachar, “Bordering Migration/Migrating Borders,” *Berkeley Journal of International Law* 37, no. 1 (2019): 93, 96–97, 108–115.

<sup>8</sup> “WHO Director-General’s opening remarks at the media briefing on COVID-19,” WHO, 18 March 2020.

<sup>9</sup> Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (United States: Basic Books, 1983), 31–32.

<sup>10</sup> Frank Harvey, “Closing Borders and Opening Debate,” *International Journal* 67, no. 1 (2012): 541.

and the arbitrariness of the privilege of birthright citizenship,<sup>11</sup> and/or possible harms of restrictive immigration policies on human rights and welfare.<sup>12</sup> Entry restrictions in response to Covid-19 appear to vindicate defenders of controlled borders. They also reflect the reality of “shifting borders” as states push their borders control points outward, restricting mobility well before a person enters their territory.<sup>13</sup> Governments increasingly impose obligations, backed by severe financial penalties, on airlines to ensure that travellers comply with health control measures at the point of origin.<sup>14</sup>

Covid-19 measures undoubtedly raise multifarious rights concerns. Internal and external movement controls implicate a whole slew of rights such as freedom of religion, as persons are restricted from travelling to pilgrimage sites, and rights to family life, if family members are located across national borders.<sup>15</sup> Under pandemic conditions, border control measures may also aggravate an “us/them” mentality. The foreigner (or “alien”) is no longer only a distinct unknown “other,” potentially the source of livelihood (e.g., tourism, migrant labour, provider of essential goods and services) or competition for it, but could now be seen also as a harbinger of death.<sup>16</sup> As the paradigms in our preliminary framework show, some state responses are built around distinctions between citizens and non-citizens, as well as permanent residents and work-visa holders and among different categories of non-citizens.

Quarantines restrict personal liberty; surveillance and screening processes raise privacy concerns. Governments are also intensifying the use of technology to enhance surveillance and border controls.<sup>17</sup> Many governments use technology for contact tracing and enforcing quarantines. For example, South Korea has used state-of-the-art technology to contain Covid-19.<sup>18</sup> International travellers are monitored for symptoms and compliance with quarantine

<sup>11</sup> Carens, “Aliens and Citizens”; Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge: Harvard University Press, 2009).

<sup>12</sup> Shelley Wilcox, “Immigrant Admissions and Global Relations of Harm,” *Journal of Social Philosophy* 38, no. 2 (Summer 2007): 274; Wilcox, “The Open Borders Debate,” 818–819.

<sup>13</sup> Shachar, “Bordering Migration,” 96–97, 108–115.

<sup>14</sup> See, for example, “The Notification of the Civil Aviation Authority of Thailand on Practical Guideline for Air Operators Performing Flights into the Kingdom of Thailand,” Civil Aviation Authority, 19 March 2020 (Thailand). See also Leelapatana and Tangthavorn, Chapter 11, this volume.

<sup>15</sup> See Schonthal and Jayatilake, Chapter 18, this volume.

<sup>16</sup> See Mary Bosworth, “Border Control and the Limits of the Sovereign State,” *Social & Legal Studies* 17, no. 2 (June 2008): 199, 201.

<sup>17</sup> Shachar, “Bordering Migration,” 121–123.

<sup>18</sup> Justin Fendos, “How surveillance technology powered South Korea’s COVID-19 response,” *Brookings*, 29 April 2020; Aaron Holmes, “South Korea is relying on technology to contain COVID-19, including measures that would break privacy laws in the US—and so far, it’s working,” *Business Insider US*, 2 May 2020. See also Li, Phusamruat, Clear, and Damian, Chapter 14, and Chung and Lee, Chapter 16, both in this volume.

measures through mandatory smartphone apps.<sup>19</sup> The government’s “excessive disclosure” of travel histories and tracking of quarantine violators with electronic wristbands however has prompted concern from South Korea’s National Human Rights Commission.<sup>20</sup>

Furthermore, limits on tourism, migrant labour, and the flow of goods and services also have serious socio-economic consequences. These should be borne in mind in assessing the employment of state power to restrict movement. The following sections examine these restrictions through the three binaries mentioned in the introduction: territoriality (internal/external controls), nationality (citizens/aliens), and directionality (entry/exit).

### 3. Territoriality: Internal/External Controls

#### A. Travel Bans

Travel controls for public health purposes are not entirely new. During the SARS epidemic, Taiwan closed its borders to visitors from Canada, China, Hong Kong, and Singapore, with a ten-day quarantine on returning Taiwanese residents.<sup>21</sup> In response to the 2014 Ebola outbreak, travellers to the Philippines and the Republic of Korea from certain African countries were subject to mandatory quarantines, while Indonesia required travellers from these places to produce medical certificates as part of their visa requirements.<sup>22</sup> In contrast, several countries hard hit by SARS were reluctant to impose travel restrictions in 2003. Still, border closures are extraordinary measures; more extraordinary is the near-complete closure of borders across Asia.

The “Asian Tigers” (Hong Kong, Singapore, South Korea, and Taiwan) along with Japan were among the first to react to the Covid-19 outbreak, possibly because they were among the hardest hit by SARS. Apart from alerting their health-care systems, all five jurisdictions swiftly issued advisories and implemented screening and quarantine measures at ports of entry in early January 2020. Taiwan implemented onboard quarantine of all direct flights arriving from

<sup>19</sup> “Regular Briefing of Central Disaster and Safety Countermeasure Headquarters on COVID-19,” Ministry of Health and Welfare, 1 April 2020 (Republic of Korea).

<sup>20</sup> “NHRCK Chairperson’s Statement on Excessive Disclosure of Private Information of COVID-19 Patients,” National Human Rights Commission of Korea, 9 March 2020; “NHRCK Chairperson’s Statement: ‘COVID-19 Is a Test of Our Society’s Ability to Protect Human Rights,’” National Human Rights Commission of Korea, 9 April 2020.

<sup>21</sup> “Asia steps up ‘war’ on SARS,” *ABC News*, 28 April 2003.

<sup>22</sup> Wendy Rhymer and Rick Speare, “Countries’ response to WHO’s travel recommendations during the 2013–2016 Ebola outbreak,” *Bulletin of the World Health Organization* 95, no. 1 (2017): 10.

Wuhan as early as 31 December 2019.<sup>23</sup> Travel restrictions were initially highly calibrated according to the incidence of the virus in different provinces and regions. By 4 February 2020, all five jurisdictions had closed their borders to residents of Hubei Province and foreigners with travel histories to the region. Citizens and certain exempt categories of foreigners such as long-term pass holders were allowed to enter but were subject to quarantine upon re-entry. Later, travel bans and mandatory quarantines were expanded to affected parts of, and later, the whole of South Korea, and parts or the whole of Iran and Italy, among others, as they became epicentres of the pandemic.

With the number of cases worldwide rising rapidly and other cross-border travel still relatively easy, it became clear that targeted bans were deficient. Countries were playing catch-up. By the third week of March, several governments issued blanket bans on entry and transit of *all* short-term visitors. Japan maintained a long list of countries subject to entry bans, but stopped short of a complete ban.<sup>24</sup>

Travel bans affect international relations. When one country imposes travel restrictions on another, it may be perceived as an affront, implying a lack of confidence in the target country's disease containment measures. Hence, South Korea mounted a sustained diplomatic campaign objecting to entry bans on travellers therefrom. On 24 February 2020, it protested "discriminatory immigration controls" at the UN Human Rights Council.<sup>25</sup> In the following weeks, the Minister and Vice-Minister of Foreign Affairs contacted their counterparts across the world, met with ambassadors, and sought to instill confidence in their government's measures, and asking for reconsideration of travel bans.<sup>26</sup> Consequently, South Korea suspended its visa-free entry and visa waiver programs only with countries that imposed entry bans on its nationals on the basis of "reciprocity."<sup>27</sup>

Some governments may be reluctant to impose travel restrictions because of their potentially profound impact on the economy, especially the travel industry.<sup>28</sup> For instance, even in early February, Thailand's Tourism Authority mounted a campaign to promote its tourism industry, seeking to persuade

<sup>23</sup> "In response to pneumonia outbreak in Wuhan, China and related test results, Taiwan CDC remains in touch with China and World Health Organization and Taiwan maintains existing disease control and prevention efforts," Centers for Disease Control, 9 January 2020 (Republic of China).

<sup>24</sup> "32nd Meeting of the Novel Coronavirus Response Headquarters," Prime Minister of Japan and His Cabinet, 27 April 2020, [https://japan.kantei.go.jp/98\\_abe/actions/202004/\\_00032.html](https://japan.kantei.go.jp/98_abe/actions/202004/_00032.html).

<sup>25</sup> "FM Delivers Statement at High-level Segment of 43rd Session of UN Human Rights Council," Ministry of Foreign Affairs, 25 February 2020 (Republic of Korea).

<sup>26</sup> See generally "2nd Briefing Session on ROK Government's Response to COVID-19 Held for Diplomatic Corps in ROK," Ministry of Foreign Affairs, 6 March 2020 (Republic of Korea).

<sup>27</sup> "S. Korea to temporarily halt visa waivers for countries with entry bans on Koreans," *Yonhap News Agency*, 8 April 2020.

<sup>28</sup> See Lee and Dy, Chapter 26, this volume.



tourists that it was life “as usual.”<sup>29</sup> Even when many Asian states had long imposed restrictions on travellers with recent travel history to China, the Thai government continued to resist domestic pressure to impose travel restrictions. In a press release on 3 March 2020, its Tourism Authority cited the WHO’s advice to justify Thailand’s position not to impose “any travel or trade restrictions against China or other affected areas.”<sup>30</sup> This reluctance may stem from the fact that tourism, of which the Chinese market is a significant proportion (27.6 per cent in 2019),<sup>31</sup> is a major component of the Thai economy.

The issue of statehood and international relations were implicated in relation to government decisions to impose travel restrictions in relation to Taiwan. Different Philippine government agencies were initially unclear as to whether a 2 February travel ban on China and its Special Administrative Regions included Taiwan.<sup>32</sup> When the Philippine Department of Justice affirmed that it did, there was backlash from the Taiwan government, which led to the Taiwan ban being lifted on 14 February.<sup>33</sup> In contrast, the Malaysian state of Sarawak lifted its ban on Taiwan on 3 March only to reinstate it the next day, a move criticized by the Taiwanese government for caving to Chinese pressure.<sup>34</sup>

Furthermore, travel restrictions can be politicized when used as tools of retaliation. For instance, while protesting travel restrictions on its travellers, the South Korean government did not hesitate to suspend visa-free entry to Japanese nationals as of 9 March as a “countermeasure” to Japanese restrictions on Korean nationals. This could be understood as part of its long-standing history of political disputes with Japan.<sup>35</sup> South Korea’s response provoked a rebuke from the WHO, which characterized the dispute as a “political spat.”<sup>36</sup> Thus, despite

<sup>29</sup> See, for example, “[Photos] Tourists are out and about in Bangkok as usual,” Tourism Authority of Thailand, 10 February 2020, <https://www.tourismthailand.org/Articles/tourists-are-out-and-about-in-bangkok-as-usual>.

<sup>30</sup> “TAT’s recommendations: Thailand’s Ministry of Public Health’s travel advisory for COVID-19,” Tourism Authority of Thailand, 3 March 2020, <https://www.tatnews.org/2020/03/tats-recommendations-thailands-ministry-of-public-healths-travel-advisory-for-covid-19>.

<sup>31</sup> Austin Bodetti, “Coronavirus Hits Thailand Hard,” *The Diplomat*, 13 February 2020; “Tourism Statistics Thailand 2000–2020,” *Thaiwebsites.com*, <https://www.thaiwebsites.com/tourism.asp>.

<sup>32</sup> “Public Advisory: On the Temporary Suspension of Visa Issuance to Travelers from China and its Special Administrative Regions,” Department of Foreign Affairs, 2 February 2020 (Philippines); “BI implements expanded travel ban includes Taiwan,” Bureau of Immigration, 11 February 2020 (Philippines).

<sup>33</sup> “BI Implements Lifting of Travel Ban to Taiwan,” Bureau of Immigration, 15 February 2020 (Philippines); “Philippines lifts Taiwan travel ban imposed over coronavirus,” *Channel NewsAsia*, 14 February 2020.

<sup>34</sup> “Malaysian state kowtows to China, flipflops on travel ban on Taiwanese,” *Taiwan News*, 5 March 2020.

<sup>35</sup> See, for example, the South Korean objection to Japanese claims over Dokdo. (“MOFA Spokesperson’s Statement on So-Called ‘Dokdo Day’ Event Held by Japan’s Shimane Prefecture,” Ministry of Foreign Affairs, 22 February 2020 (Republic of Korea).)

<sup>36</sup> “WHO slams Japan and South Korea’s tit-for-tat travel curbs,” *Nikkei Asian Review*, 7 March 2020.

the existence of a global health infrastructure, the decisions of governments on travel restrictions are ultimately determined by national interests.

## B. Movement Control Orders

Coupled with the unprecedented hardening of borders, many Asian jurisdictions have imposed internal movement control orders in response to Covid-19. These measures, variously called “lockdowns” (Thailand), “curfew” (India), “Enhanced Community Quarantine” (Philippines), “Movement Control Order” (MCO) (Malaysia) and “circuit breaker” (Singapore), involve anything from closures of workplaces, closure of non-essential businesses, prohibition of gatherings, closures of places of worship, closures of sports and leisure sites, restrictions on movement, and, in some countries, the closures of state borders in federal states. There are two notable aspects of these measures.

The first is that the constitutional scheme of many Asian states envisage the possibility of internal movement restrictions as part of emergency powers, but not all have invoked those powers. Instead, several like Malaysia and Singapore have used the “legislative model” to delegate extraordinary, but temporary, powers to the executive to counter Covid-19.<sup>37</sup> Malaysia’s MCO was issued by the Health Minister under the *Prevention and Control of Infectious Diseases Act 1988*,<sup>38</sup> while Singapore expedited the passage of the *Covid-19 (Temporary Measures) Act 2020* to issue control order regulations within a single day.<sup>39</sup> In contrast, Thailand declared a state of emergency on 25 March, restricting external and internal movement, and imposing screening and tracking requirements on inter-provincial travel.<sup>40</sup> Several Thai provinces, including Krabi, Phuket, and Songkhla closed their points of entry and exit, with exceptions for essential goods and services.<sup>41</sup> In comparison, Japan made it clear that it was not imposing

<sup>37</sup> John Ferejohn and Pasquale Pasquino, “The law of the exception: A typology of emergency powers,” *International Journal of Constitutional Law* 2, no. 2 (2004): 210; see also Jaclyn Neo and Darius Lee, “Singapore’s Legislative Approach to the COVID-19 Public Health ‘Emergency,’” *Verfassungsblog*, 18 April 2020.

<sup>38</sup> *Prevention and Control of Infectious Diseases Act 1988*, Act No. 342 of 1988; *Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020*, P.U. (A) 91.

<sup>39</sup> *COVID-19 (Temporary Measures) Act 2020*, Act No. 14 of 2020; *COVID-19 (Temporary Measures) (Control Order) Regulations 2020*, S 254/2020.

<sup>40</sup> *Regulation Issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (No. 1)*, Prime Minister of Thailand, 25 March 2020.

<sup>41</sup> “Closure of the Province of Phuket’s Point of Entry and Exit during the crisis to curb the spread of the Coronavirus Disease 2019 (COVID-19),” Governor of the Province of Phuket, Thailand, 29 March 2020. See also the Tourism Authority of Thailand’s press releases on 5 April 2020.

any lockdown when it declared a state of emergency on 7 April, but did so to mobilize its Self-Defense Forces and medical staff if necessary.<sup>42</sup>

The second notable aspect of these measures is their breadth and depth, within and across states. For example, although lockdowns and curfews are not entirely unknown in India, they have tended to be targeted at specific cities or regions. However, with its population of some 1.3 billion, India entered the world's largest lockdown in history on 25 March, which included the suspension of all transport services.<sup>43</sup> Under severe economic distress, many migrant labourers took to the highways by foot or other means in order to return home, prompting the Ministry of Home Affairs to "effectively seal" state borders and to provide temporary shelters and necessities to these labourers.<sup>44</sup> The government was sued in a public interest case in which the Supreme Court of India confirmed the measures and recorded the assurances made by the government.<sup>45</sup> Tragically, in May amid the lockdown, sixteen migrant workers were run over by a train after having fallen asleep on the tracks.<sup>46</sup>

#### 4. Nationality: Citizens/Aliens

Poet Robert Frost once wrote that home "is the place where, when you have to go there, they have to take you in."<sup>47</sup> Citizenship comes with rights and privileges. Citizenship provides a legal link between individual and state, serving as a shorthand for one's identity and membership in a *community* (not just a political entity).<sup>48</sup> It engenders "the feeling that one belongs, is connected through one's sense of emotional attachment, identification, and loyalty."<sup>49</sup> Citizenship is thus a status, an identity, and a community as well as the portal to a host of rights, what Arendt calls "the right to have rights."<sup>50</sup>

<sup>42</sup> "Press Conference by the Prime Minister Regarding the Declaration of a State of Emergency," Prime Minister of Japan and His Cabinet, 8 April 2020, [https://japan.kantei.go.jp/98\\_abe/actions/202004/\\_00011.html](https://japan.kantei.go.jp/98_abe/actions/202004/_00011.html).

<sup>43</sup> "Annexure to Ministry of Home Affairs Order No. 40-3/2020-D dated 24.03.2020," Ministry of Home Affairs, 24 March 2020 (India); "I am so afraid': India's poor face world's largest lockdown," *Associated Press*, 17 April 2020.

<sup>44</sup> *Order No. 40-3/2020-DM-I(A)*, Ministry of Home Affairs, 29 March 2020 (India).

<sup>45</sup> *Alakh Alok Srivastava v. Union of India*, Writ Petition (Civil) No. 468 of 2020, 31 March 2020 (Supreme Court, India).

<sup>46</sup> "Indian migrant deaths: 16 sleeping workers run over by train," *BBC News*, 8 May 2020.

<sup>47</sup> Robert Frost, "The Death of the Hired Man," <https://www.poetryfoundation.org/poems/44261/the-death-of-the-hired-man>.

<sup>48</sup> Bosniak, "Citizenship," 185.

<sup>49</sup> Patrick Weil, "From conditional to secured and sovereign: The new strategic link between the citizen and the nation-state in a globalized world," *International Journal of Constitutional Law* 9, nos. 3-4 (2011), 615, 616.

<sup>50</sup> Hannah Arendt, *The Origins of Totalitarianism* (Cleveland: Meridian Books, 1962), 296-297.

The Covid-19 response has accentuated the “normative valence”<sup>51</sup> of citizenship. National responses to Covid-19 show that citizenship is critical to freedom of movement. Legally speaking, only *citizens* (and some long-term residents) are entitled to enter a country. Article 12 of the *International Covenant on Civil and Political Rights* guarantees that “[n]o one shall be arbitrarily deprived of the right to enter his own country,” as well as that “[e]veryone shall be free to leave any country, including his own.” There are “few, if any” circumstances justifying the deprivation of the right of entry under this article.<sup>52</sup> The constitutions of Singapore, Malaysia, and Thailand prohibit the banishment or exclusion of citizens.<sup>53</sup> Even where the constitution is not explicit, courts have implied such a right into the constitution. Indian courts have inferred a right of re-entry from the right to “reside and settle in any part of the territory of India” under Article 19(1)(e) of the Indian Constitution.<sup>54</sup> In a Covid-19-era case, a nineteen-year-old dual citizen (Indian and American) stranded at a Dubai airport was allowed, exceptionally, in the court’s opinion, to return to India to reunite with her family.<sup>55</sup> India eventually eased its restrictions on nationals, although Indian nationals were still discouraged from “non-essential travel” back home.<sup>56</sup> By contrast, Indonesia initially recalled its citizens, though it later backtracked,<sup>57</sup> while Singapore encouraged its citizens to return, and those on student exchange and official overseas placements were recalled.<sup>58</sup>

Citizenship was also a crucial basis for evacuating nationals from areas affected by Covid-19, including Wuhan, and later, Iran and Italy. Some countries were wary that recalling citizens would lead to a spike in domestic infection cases. After initially advising its citizens to return, Indonesia changed its position two weeks later, urging them to “stay put,” while promising aid, to “maintain the safety of Indonesian people at home.”<sup>59</sup> They could, however, return at

<sup>51</sup> Linda Bosniak, “Citizenship,” in Peter Cane and Mark Tushnet eds., *The Oxford Handbook of Legal Studies* (Oxford: Oxford University Press, 2005), 183.

<sup>52</sup> *General Comment No. 27: Article 12 (Freedom of Movement)*, Human Rights Committee, UN Doc. CCPR/C/21/Rev.1/Add.9, 2 November 1999, [21].

<sup>53</sup> See *Constitution of the Republic of Singapore* (1999 Rev. Ed.), art. 13(1); *Federal Constitution of Malaysia* (Reprint as at 1 November 2010), art. 9(1); *Constitution of the Kingdom of Thailand*, enacted on the 24th Day of August B.E. 2550, s. 34.

<sup>54</sup> See *Ebrahim Vazir Mavat v. The State of Bombay and Others*, 1954 AIR 229, (Supreme Court, India).

<sup>55</sup> *Sabah Manal Colabawalla v. Union of India and Another*, 17 March 2020, Writ Petition No. 871 of 2020 (Bombay High Court, India).

<sup>56</sup> “Annexure to Ministry of Home Affairs’ Order No. 40-3/2020-DM-I(A) dated 5th May, 2020,” Ministry of Home Affairs, 5 May 2020 (India).

<sup>57</sup> “Additional Measures of The Indonesian Government in Relation to Covid-19 Response,” Ministry of Foreign Affairs, 17 March 2020 (Republic of Indonesia).

<sup>58</sup> “Advisory for Singaporean Students Studying Overseas,” Ministry of Foreign Affairs, 17 March 2020 (Singapore); “Institutes of Higher Learning to Suspend All Official Overseas Placements,” Ministry of Education, 15 March 2020 (Singapore).

<sup>59</sup> “Govt urges Indonesians abroad to stay put, promises aid during COVID-19 pandemic,” *The Jakarta Post*, 1 April 2020.

their own expense subject to screening requirements and health regulations.<sup>60</sup> Pakistan, however, refused to evacuate citizens from Wuhan, even after the lockdown,<sup>61</sup> despite protests in Pakistan by families of those who were stranded. Prime Minister Imran Khan claimed that “everything would be normal” in a few days, comparing Covid-19 to the flu.<sup>62</sup>

Countries’ responses distinguish between citizens and non-citizens, and even among different categories of non-citizens based on their visa status. Singapore allowed both citizens and permanent residents to return; however, work-visa holders, who were initially treated the same way, were later required to obtain government approval.<sup>63</sup> Only a “minority” of 80,000 re-entry applications were initially approved.<sup>64</sup> Malaysia prohibited re-entry of long-term residents during the MCO, including those under the “Malaysia My Second Home” (MM2H) visa, introduced to allow certain foreigners to stay in Malaysia for as long as possible on a multiple-entry social visit pass.<sup>65</sup> A group assisting MM2H holders pointed to the hardship suffered by MM2H-ers, usually retirees above the age of sixty, of whom more than 60 per cent intended to live permanently in Malaysia.<sup>66</sup>

## 5. Directionality: Exit/Entry

Most Covid-19 travel restrictions were aimed at entry, but some governments also imposed exit bans, which are arguably even more controversial. These bans differ from de facto restrictions on exit, arising from flight (or other transport) cancellations, whether by the airlines or by order of the government, or consequential to internal control measures such as lockdowns. Prohibiting exit could even be challenged for being unconstitutional. For instance, Hong Kong’s *Basic Law* guarantees all residents the “freedom to travel and to enter or leave the Region,”<sup>67</sup> while the Japanese Constitution enshrines the freedom of “all persons to move to a foreign country.”<sup>68</sup>

<sup>60</sup> “COVID-19: Indonesians stranded abroad return home amid ‘mudik’ ban,” *The Jakarta Post*, 27 April 2020.

<sup>61</sup> “Evacuation of Pakistanis in China against larger interest of country, says Dr Zafar Mirza,” *Dawn News*, 30 January 2020.

<sup>62</sup> “Imran Khan Breaks Silence on Pakistan Students Stuck in China’s Coronavirus-hit Wuhan,” *RepublicWorld*, 17 March 2020.

<sup>63</sup> “MOM Entry Approval and Stay-Home Notices Now Covers All New and Existing Work Pass Holders,” Ministry of Manpower, 18 March 2020 (Singapore).

<sup>64</sup> As at 4 May: Sing., *Parliamentary Debates*, vol. 94 (4 May 2020) (Josephine Teo).

<sup>65</sup> “Expats plead to be allowed to return to Malaysia,” *New Straits Times*, 19 April 2020; Official Portal, Malaysia My Second Home Program, <http://www.mm2h.gov.my>.

<sup>66</sup> Andy Davison, “Allow MM2H visa holders to return to the country during MCO period,” *The Star*, 26 March 2020.

<sup>67</sup> *Hong Kong Basic Law*, art. 31.

<sup>68</sup> *The Constitution of Japan* (3 November 1946), art. 22.

The Philippine government stands out among Asian states, prohibiting not only travel from but also travel to regions affected by Covid-19. On 2 February, the government prohibited Filipino nationals from travelling to China, Hong Kong, and Macau,<sup>69</sup> causing hardship to thousands of overseas Filipino workers (OFW) who risked losing their jobs if they were not able to return to their place of employment.<sup>70</sup> More than two weeks later, the government granted exemptions to OFWs, permanent residents, and students bound for Hong Kong and Macau but required them to declare their awareness of the risks involved.<sup>71</sup> A subsequent travel ban on Filipinos travelling to South Korea (first complete, then partial) also exempted OFWs, permanent residents, and students.<sup>72</sup> Subsequent restrictions on outbound travel from any international airport in Luzon after 20 March also exempted OFWs, *balikbayans* (Filipinos resident overseas), and foreign nationals.<sup>73</sup>

While Singapore did not prohibit its nationals from leaving the country, citizens, permanent residents, or long-term pass holders who travelled after 27 March were required, upon their return, to pay the full costs of a mandatory fourteen-day quarantine at government-designated facilities, as well as unsubsidized hospitalization rates, *if* admitted for suspected Covid-19 symptoms within fourteen days of their return. The justification was that they had “[disregarded] prevailing travel advisories” and “[risked] the health of other Singaporeans and residents.”<sup>74</sup> By contrast, Malaysia banned its citizens from leaving the country as part of the MCO.<sup>75</sup> This created practical difficulties for Malaysians who cross the border daily to work and for their Singaporean employers, prompting both governments to intervene and rush to secure accommodation in Singapore for these workers.<sup>76</sup>

<sup>69</sup> “BI to implement expansion of travel ban,” Bureau of Immigration, 2 February 2020 (Philippines).

<sup>70</sup> “300 OFWs affected by temporary travel ban, gov’t to give financial help,” *CNN Philippines*, 4 February 2020; “25,000 Filipino maids in danger of losing jobs following travel ban,” *The Star*, 8 February 2020.

<sup>71</sup> “Public Advisory: OFWs from HK and Macau to be Exempted from Travel Ban,” Department of Foreign Affairs, 19 February 2020 (Philippines).

<sup>72</sup> “BI implements partial lifting of travel ban to SoKor,” Bureau of Immigration, 4 March 2020 (Philippines).

<sup>73</sup> “Foreign nationals, balikbayans, OFWs, may now depart PH during community quarantine period,” Bureau of Immigration, 18 March 2020 (Philippines).

<sup>74</sup> “Tighter Measures to Minimise Further Spread of COVID-19,” Ministry of Health, 24 March 2020 (Singapore).

<sup>75</sup> “Movement Control Order: FAQ & Info,” Prime Minister’s Office, 19 March 2020 (Malaysia).

<sup>76</sup> “Accommodating Workers Affected by Lockdown in Malaysia,” Ministry of Manpower, 17 March 2020 (Singapore); “Situasi Rakyat Malaysia di Singapura,” Ministry of Health, 20 March 2020 (Malaysia) [Malay language only].

## 6. Conclusion: Toward a “New Normal”?

Covid-19 is a pandemic of global proportions, overshadowing previous health crises such as SARS, H1N1, MERS, and Ebola, with potential ramifications for years to come. Observers have drawn comparisons between Covid-19 and the September 11 attacks in 2001, suggesting that this pandemic will change the world on a scale similar to global terrorism.<sup>77</sup> In charting the course of the world order after Covid-19, it has become common to speak of a “new normal.”<sup>78</sup>

Governmental responses to Covid-19 highlight both the *independence* and *interdependence* of states in today’s globalized world. The widespread closure of borders to outsiders and insiders demonstrates that classical Westphalian notions of the nation and state borders persist, even while being transformed by ever-more-innovative technologies. The willingness of governments to shut their external and internal borders—and the exceptions they make—also tend to reaffirm that the primacy of national interests, with public health and the continued flow of essential goods and services as non-negotiable considerations. As countries negotiate clustered openings of borders,<sup>79</sup> it would seem that not only do “good fences make good neighbours,” but “good neighbours make good fences.”

<sup>77</sup> See, for example, Hilal Kaplan, “COVID-19: The world’s 9/11,” *Daily Sabah*, 26 March 2020.

<sup>78</sup> “WHO Director-General’s opening remarks at the media briefing on COVID-19,” WHO, 22 April 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--22-april-2020>.

<sup>79</sup> See, for example, “Asia Is Slowly Beginning to Reopen Travel. Here’s What the World Could Learn,” *Time*, 12 May 2020.

# Central Banks and Their Limits in a Pandemic

*Christian Hofmann\**

## 1. Introduction

This chapter discusses the reactions of central banks to the current pandemic and contrasts them with their monetary policy operations during normal (non-crisis) times and their reactions to the Global Financial Crisis (GFC) of 2007–2009. It situates the response of central banks in Asia within a global context, examining and comparing the responses of central banks in the United States, the Euro area, the United Kingdom, Japan, Singapore, and Hong Kong (all in section 2). It explains why this crisis is unprecedented, making it dangerous in terms of financial stability and state finances and difficult for central banks to return to normality (section 3).

## 2. Central Bank Operations: From the Conventional to the Unprecedented

One of the most important roles of central banks consists of their provision of liquidity to the financial markets and the general economy. To achieve their monetary policy objectives, they transact with commercial banks as their intermediaries, which transpose the central banks' monetary targets into the markets. Normal times require little intervention, while exceptional times demand massive interference by central banks in the markets for liquidity.

### A. Conventional Measures

Central banks supply financial markets with liquidity through their open market operations. During normal times, these operations target lending rates in the

\* Associate Professor, Faculty of Law, National University of Singapore.



majority of markets around the world and currency exchange rates in others. Central banks' standing facilities are always available and steer interest rates in the markets. Central banks pay interest for short-term deposits by commercial banks and charge them for short-term loans. These rates form the floor and ceiling for all short-term lending transactions in the interbank lending markets because no bank would lend for less than the deposit rate or borrow for more than the lending rate of the central bank. Since banks' funding costs depend on interbank lending rates, central banks' rates for standing facilities ultimately impact all market lending rates.

The Eurosystem, the central bank system consisting of all central banks in the Euro area,<sup>1</sup> is a typical representative of this majority group of central banks. The rates for the marginal lending facility that allows banks access to overnight liquidity from the Eurosystem currently stand at 0.25 per cent and the deposit facility that allows banks to park their money in central bank accounts at a punitive rate of -0.5 per cent.<sup>2</sup> The Bank of England is another such typical example. Its conventional lending facilities consist of its Operational Sterling Facility and entail overnight lending against collateral under the Overnight Lending Facility and overnight deposits under the Overnight Standing Deposit Facility.

In addition to steering the interest rates, central banks supply moderate amounts of liquidity to the markets during normal times, typically through lending facilities available to commercial banks with maturities that exceed those of the marginal lending facilities. In the Eurosystem, the Main Refinancing Operations (MROs) allow commercial banks to borrow from central banks for periods of one week in exchange for adequate collateral or via repurchase transactions (repos).<sup>3</sup> They are complemented by the Longer-term Refinancing Operations with maturities of three months.<sup>4</sup> Correspondingly, the Bank of England offers longer-term loans to counterparties (including commercial banks and other businesses) under its Indexed Long-Term Repo scheme. The

<sup>1</sup> The Eurosystem consists, therefore, of twenty central banks: the European Central Bank (ECB) and the national banks of the nineteen member states whose currency is the euro. For details, see H.P.K. Scheller, *The European Central Bank: History, Role and Functions*, 2nd ed. (European Central Bank, 2006); Bernd Krauskopf and Christine Steven, "The Institutional Framework of the European System of Central Banks: Legal Issues in the Practice of the First Ten Years of its Existence," (2009) 46 *CML Review* 1143; Chiara Zilioli and Phoebus Athanassiou, "The European Central Bank," in Robert Schütze and Takis Tridimas, eds., *Oxford Principles of European Union Law*, vol. 5 (2018), 610.

<sup>2</sup> For regularly updated numbers, see <https://www.ecb.europa.eu/mopo/implement/sf/html/index.en.html>.

<sup>3</sup> For the ordinary tender procedure of the Eurosystem, see "The Implementation of Monetary Policy in the Eurozone—General Documentation on Eurosystem Monetary Policy Instruments and Procedures," European Central Bank, February 2011, 31–41, <http://www.ecb.int/pub/pdf/other/gendoc2011en.pdf>.

<sup>4</sup> "Open market operations," Monetary Policy, European Central Bank, <https://www.ecb.europa.eu/mopo/implement/omo/html/index.en.html>.

Bank provides lending for a six-month period subject to adequate collateral.<sup>5</sup> In the United States, the Federal Reserve System (“the Fed”) provides a standard lending facility called the Primary Credit Facility under which banks can receive short-term lending with a maximum duration of a few weeks. Slightly longer maturity periods are available under the Seasonal Credit Facility.<sup>6</sup>

Some central banks, among them those of Asia’s financial centres Singapore and Hong Kong, do not target interest rates, but foreign exchange rates with their monetary policies. In addition, they provide liquidity to the banking system.<sup>7</sup> To steer exchange rates, the Monetary Authority of Singapore (MAS) manages the Singapore dollar against a basket of currencies of Singapore’s major trading partners and competitors and maintains it within an undisclosed target band. To execute these interventions, the MAS transacts with banks in Singapore and thereby expands or contracts the monetary base in Singapore.<sup>8</sup> When targeting the amount of liquidity in the banking system with its liquidity management framework, the MAS enters into transactions with banks like other central banks. It accepts deposits from or lends to banks or enters into repos with banks.<sup>9</sup>

## B. Unconventional Measures

Central banks step up their liquidity management when the economic situation so requires, especially when a financial crisis occurs. The GFC was a typical situation in which swift and vigorous measures of central banks prevented collapses of the financial system around the globe. It was also a standard scenario of a financial crisis because it originated where financial difficulties typically materialize first: in the banking sector. The business model of banks is inherently risky as a result of the three classic transformation processes in which banks engage. Banks borrow cash short-term and lend it to the general public or enter into

<sup>5</sup> For the Bank of England’s lending programs, *see* “Bank of England Market Operations Guide: Our Tools,” Bank of England, <https://www.bankofengland.co.uk/markets/bank-of-england-market-operations-guide/our-tools>.

<sup>6</sup> 12 Code of Federal Regulations, 2016, (CFR) s. 201.4(a) for the Primary; 12 Code of Federal Regulations, 2016, 12 CFR s. 201.4(c) for the Seasonal Credit Facility.

<sup>7</sup> With its monetary policy operations, Singapore’s MAS targets the exchange rate through intervention in foreign exchange markets, and the liquidity in the banking system through money market operations and liquidity facilities aims to attain price stability for sustainable economic growth; *see* “Monetary Policy Operations in Singapore,” MAS, March 2013, 2.2.

<sup>8</sup> For details, *see* “Monetary Policy,” 2.4 and Box 1.

<sup>9</sup> “Monetary Policy,” 3.3. In addition, the MAS issues MAS Bills to banks and transacts foreign exchange swaps. For all four types of liquidity management transactions, *see* “Monetary Policy,” 3.14 and Box 2.

other long-term commitments. In addition to the liquidity and maturity transformations inherent in this process, banks engage in credit transformation. The bank as a fully liable financial intermediary is exposed to the credit risk of a multitude of debtors, whereas its creditors limit their exposure to the default risk of the bank.<sup>10</sup> These three transformation processes expose banks to the risks of illiquidity and insolvency. Central banks intervene when liquidity shortages arise. The bank funding model consists of a mix of retail deposits and short-term borrowing from the money markets. This latter component is frail and unreliable in crisis times. Wholesale lenders, above all banks, withdraw their commitments when signs of difficulties in markets appear.

Central banks react in multiple ways (as explained immediately following). The defining characteristics of all intervention methods are that central banks expand their balance sheet. They trade newly created central bank money or other highly liquid assets in exchange for collateral or less liquid assets. Traditionally, only large companies, especially banks but also financial institutions and large corporations outside the financial sector, are eligible counterparties for transactions with central banks. All other parts of the economy profit only indirectly.

To provide more liquidity to the markets and in faster ways, central banks have options with more direct and stronger effects. Central banks may step up the volumes and lengths of their loans and repurchase agreements. In addition, central banks may increase the volumes of their purchases in financial instruments, a measure that is even more important than increased lending in terms of liquidity effects. They use Quantitative Easing, a term coined for vast programs for the purchase of debt instruments from a wide range of professional counterparties.<sup>11</sup>

Examples of mass purchases of financial instruments from the Eurosystem include purchases of debt instruments issued by Eurozone member states under the Securities Markets Programme in 2010,<sup>12</sup> the Covered Bond Purchase

<sup>10</sup> For these three types of transformations and the resulting risks, see John Armour et al., *Principles of Financial Regulation* (Oxford University Press, 2016), 290–293; José Gabilondo, *Bank Funding, Liquidity, and Capital Adequacy* (Cheltenham: Edward Elgar Publishing, 2016), 27–45.

<sup>11</sup> “Quantitative Easing Explained,” Bank of England, <https://www.bankofengland.co.uk>.

<sup>12</sup> Decision of the European Central Bank of 14 May 2010 on establishing a securities markets program, 2010, OJ L124/8 (ECB/2010/5). In 2012, the Governing Council of the ECB announced the Outright Monetary Transactions (OMT) that gave the Eurosystem a mandate to buy as much sovereign debt as the ECB Governing Council considered necessary for the purposes of the Eurosystem’s monetary policy. However, purchases under the OMT never took place. See “Asset Purchase Programmes,” European Central Bank, accessed 18 April 2016, <https://www.ecb.europa.eu/mopo/implement/omt/html/index.en.html>. “Technical Features of Outright Monetary Transactions,” European Central Bank, 6 September 2012, [https://www.ecb.europa.eu/press/pr/date/2012/html/pr120906\\_1.en.html](https://www.ecb.europa.eu/press/pr/date/2012/html/pr120906_1.en.html) (press release).

Programmes (CBPPs) from 2009–2012,<sup>13</sup> and the Expanded Asset Purchase Programme (EAPP) since 2015.<sup>14</sup>

The Bank of England also uses massive purchases of financial instruments as an unconventional monetary policy instrument in an effort to pour vast amounts of liquidity into the UK market. With its Asset Purchase Facility (APF), the Bank transacts with a wide range of financial intermediaries and buys their UK government bonds (gilts) and corporate bonds.<sup>15</sup> During the peak of the GFC, the Bank instigated its Special Liquidity Scheme. The Scheme allowed banks to swap their illiquid assets (such as Asset Backed Securities) for UK Treasury Bills.<sup>16</sup>

The Fed intervened very aggressively during the GFC. Like other central banks, it extended the maturity rates for lending and provided full allotment under its newly created “Term Auction Facility” (TAF).<sup>17</sup> With its “secondary credit loans,” the Fed helped banks that faced serious liquidity issues and could not comply with the conditions that applied to its other lending programs.<sup>18</sup> In addition, the Fed transacted with a wide range of financial intermediaries (including money market funds, insurance companies, and investment banks) during the GFC to rid them of their illiquid assets, thereby helping them survive, facilitating mergers and other rescue measures and channelling more liquidity into the markets.<sup>19</sup>

Whereas central bank lending is generally subject to adequate collateralization to minimize the risk of loss for the central banks, times of crisis complicate the situation and may cause central banks to deviate from this rule. Ideally, collateral

<sup>13</sup> On the Eurosystem’s covered bond purchase programs, see “Covered Bond Purchase Programme Completed,” European Central Bank, 30 June 2010, <http://www.ecb.int/press/pr/date/2010/html/pr100630.en.html> (press release). See also “ECB Announces Details of Its New Covered Bond Purchase Programme (CBPP2),” European Central Bank, 3 November 2011, [http://www.ecb.int/press/pr/date/2011/html/pr111103\\_1.en.html](http://www.ecb.int/press/pr/date/2011/html/pr111103_1.en.html).

<sup>14</sup> “Economic Bulletin Issue 1/2015,” European Central Bank, 21 January 2015, <https://www.ecb.europa.eu/pub/pdf/ecbu/eb201501.en.pdf>, 15–18; “ECB Announces Expanded Asset Purchase Programme,” European Central Bank, 22 January 2015, [https://www.ecb.europa.eu/press/pr/date/2015/html/pr150122\\_1.en.html](https://www.ecb.europa.eu/press/pr/date/2015/html/pr150122_1.en.html).

<sup>15</sup> For details on the APF, see “Our Tools.”

<sup>16</sup> “Market Notice,” Bank of England, 3 February 2009, <http://www.bankofengland.co.uk/markets/Documents/marketnotice090203c.pdf>; for detail on the scheme, see Sarah John, Matt Roberts, and Olaf Weeken, “The Bank of England’s Special Liquidity Scheme,” *Bank of England Quarterly Bulletin* Q1/2012, at 57.

<sup>17</sup> For details on the TAF and other lending activities of the Fed during the GFC, see Andrew Campbell and Rosa Lastra, “Revisiting the lender of last resort,” *Banking and Finance Law Review* 24, no. 3 (June 2009): 453, 492; K. Judge, “The first year: the role of a modern lender of last resort,” *Columbia Law Review* 116 (2016): 843, 855.

<sup>18</sup> 12 Code of Federal Regulations, 2016, s. 201.4(b).

<sup>19</sup> For details, see “Report Pursuant to Section 29 of the Emergency Economic Stabilization Act of 2008: Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility,” Federal Reserve System, September 2008; “Report Pursuant to Section 129 of the Emergency Economic Stabilization Act of 2008: Securities Borrowing Facility for American International Group, Inc.,” Federal Reserve System, September 2008; José Gabilondo, “Central banks, systemic lending and collateral markets,” in Matthias Haentjens and Bob Wessels, eds., *Research Handbook on Crisis Management in the Banking Sector* (2015), 31.

consists of highly liquid assets that are subject to low risks of default.<sup>20</sup> However, in crisis times when debtors default on their obligations, issuers of sovereign and private debt experience down-gradings, and investors attempt to swap risky for safe assets, such preferred collateral becomes rare—too rare for central banks to insist on adequacy requirements applied during normal times. As an example: the Eurosystem lowered its collateral requirements drastically during the GFC and subsequent Eurozone sovereign debt crisis and accepted debt instruments that would not have been considered eligible during non-crisis times.<sup>21</sup>

### C. Unprecedented Measures: Covid-19 Crisis Responses

Covid-19 crisis responses follow the same patterns in all parts of the world. Large economies, be they in North America, Europe, or Asia, support measures that focus on big corporations and small to medium-sized enterprises (SMEs) alike (as illustrated here for the United States, the United Kingdom, the Euro zone, and Japan). Big corporations with sufficient capital cushions can survive in a crisis for as long as their cash flow is guaranteed, and central bank mass purchases in markets for debt securities warrant that big corporations do not run out of liquidity. SMEs do not issue (sufficient amounts of) debt securities, but depend on bank loans. Central banks do not lend to entities other than commercial banks (and exceptionally other financial institutions), but as this crisis shows, they find ways to support banks in their lending activities to the SME sector. In small economies like Singapore and Hong Kong where domestic firms are mostly SMEs, mass purchases of debt securities are uncommon, and the focus is mostly on debt relief and liquidity support for SMEs.

To channel liquidity into the markets and lower lending rates, central banks that target interest rates react in different ways depending on the rates they offered prior to the outbreak of the pandemic.

<sup>20</sup> See, for example, Guideline ECB/2000/7 of the European Central Bank of 31 August 2000 on Monetary Policy Instruments and Procedures of the Eurosystem, 2000, OJ (L 310) 1, amended by Guideline ECB/2010/13 of the European Central Bank of 16 September 2010, 2010, OJ (L 267) 21.

<sup>21</sup> In a first wave, the requirements were generally relaxed; see Guideline ECB/2008/18 of the European Central Bank of 21 November 2008 on Temporary Changes to the Rules Relating to Eligibility of Collateral, 2008, OJ (L 314) 14, amended by Guideline ECB/2009/24 of the European Central Bank of 10 December 2009, 2009, OJ (L 330) 95. The second wave saw easements for specific countries for which all minimum rating requirements were suspended, e.g., by Decision (EU) of the European Central Bank of 6 May 2010 on temporary measures relating to the eligibility of marketable debt instruments issued or guaranteed by the Greek government, 2010, OJ L117/102. With the third wave, the Eurosystem expanded the classes of eligible assets, see “Measures to Preserve Collateral Availability,” European Central Bank, 6 September 2012, [http://www.ecb.int/press/pr/date/2012/html/pr120906\\_2.en.html](http://www.ecb.int/press/pr/date/2012/html/pr120906_2.en.html) (press release).

### i. The Covid-19 Response in the United States

In the United States, interest rates were above zero before March 2020, which allowed the Fed to lower them to zero or close to zero and to slash banks' borrowing costs further. The Fed reduced its interest rate for bank deposits to zero per cent, thereby targeting the interbank lending rate, which the Fed seeks to lower to a range of 0–0.25 per cent.<sup>22</sup> On the Fed's behalf, the Federal Reserve Bank of New York executes transactions to achieve this target range. It engages in repo transactions with banks, allowing them to borrow as much liquidity as needed, and it deters them from depositing money with the Fed by offering 0 per cent returns on reverse repos and limiting such reverse repo transactions to USD 30 billion per day and bank. For faster and more direct liquidity supply to the markets, it also buys US Treasuries and mortgage-backed securities to "support the smooth functioning of markets for these securities."<sup>23</sup>

### ii. The Covid-19 Response in the Eurozone

In the Eurozone, interest paid by the Eurosystem for bank deposits was negative prior to the outbreak of the current crisis, thereby limiting these central banks' options. The Eurosystem has left interest rates unchanged, which remain at 0 per cent for the MROs, at 0.25 per cent for the marginal lending facility, and at –0.5 per cent for the deposit facility. Instead of lowering interest rates further, the Eurosystem expanded its Targeted Longer-term Refinancing Operations (TLTROs) in March 2020 to allow banks immediate access to unlimited borrowing for periods of up to three months (named "TLTRO III"), and in late April it announced its Covid-19 crisis measures for the remainder of 2020 and 2021.<sup>24</sup>

With these new measures, the Eurosystem increases the liquidity supply by unprecedented volumes. The new measures consist of additional longer-term lending facilities called the "pandemic emergency longer-term refinancing operations (PELTROs)." Under the PELTROs, banks can borrow amounts from the Eurosystem for periods between eight and sixteen months for rates of 25 basis points below the rates of the MROs. The MRO rates are currently 0 per cent (see earlier), leading to lending rates for PELTROs of –0.25 per cent—meaning that banks receive more money than they need to pay back. The amounts available under the PELTROs are unlimited (no tendering), and collateral requirements are eased.<sup>25</sup> With these exceptional loans, the Eurosystem hopes to motivate the

<sup>22</sup> "Minutes of the Federal Open Market Committee of 15 March 2020," Federal Reserve Bank, <https://www.federalreserve.gov/monetarypolicy/fomcminutes20200315.htm>.

<sup>23</sup> "Minutes of the Fed meeting of 29 April 2020," Federal Reserve Bank, <https://www.federalreserve.gov/monetarypolicy/fomcminutes20200429.htm>.

<sup>24</sup> "ECB announces measures to support bank liquidity conditions and money market activity," European Central Bank, 20 March 2020 (press release).

<sup>25</sup> The easements were announced on 7 and 23 April 2020 and were to remain in place until the end of September 2021.

banks to support the ailing SME sector.<sup>26</sup> In addition, the Eurosystem's massive debt purchasing programs under the EAPP (see earlier) are complemented by the Pandemic Emergency Purchase Programme (PEPP) of private and public sector securities with volumes of EUR 1.35 trillion until (currently) June 2021.<sup>27</sup>

### iii. The Covid-19 Response in the United Kingdom

In addition to its enhanced lending schemes to banks,<sup>28</sup> the Bank of England provides financial support directly targeted at businesses in the United Kingdom. With its Covid Corporate Funding Facility (CCFF), the Bank buys commercial paper of up to one-year maturity issued by firms “making a material contribution to the UK economy.”<sup>29</sup> However, smaller companies do not issue commercial paper and therefore do not profit from the CCFF. To support SMEs, the Bank of England offers a specific funding scheme to banks and building societies. SMEs cannot directly borrow from the Bank of England, but apply for loans from the Bank's counterparties, which may then apply for a loan from the Bank under the favourable terms of its new Term Funding Scheme. The Bank's counterparties remain the direct lenders to SMEs, but these counterparties' refinancing costs are extremely low because the funding comes from the Bank of England and is almost free for the counterparties (the interest rate is a mere 0.1 per cent) and the default risk, which makes a loan expensive for a commercial bank because bank regulation requires a whole range of risk-mitigating safeguards,<sup>30</sup> is reduced for a wide range of loans for which the fiscal authorities provide guarantees.<sup>31</sup>

### iv. The Covid-19 Response in Japan

The Bank of Japan battled against an ailing economy and deflationary tendencies and set interest rate targets to close to zero well before the outbreak of Covid-19. When the effects of the pandemic hit Japan, the Bank was in a similar position

<sup>26</sup> See “ECB announces measures,” at 2: “These operations will support bank lending to those affected most by the spread of the coronavirus, in particular small and medium-sized enterprises.”

<sup>27</sup> In March, the Eurosystem increased the PEPP volumes to EUR 750 billion; see “ECB announces €750 billion Pandemic Emergency Purchase Programme (PEPP),” European Central Bank 18 March 2020 (press release); in June 2020, the volumes were stepped up to EUR 1,350 billion; see “Monetary Policy Decisions,” European Central Bank, 4 June 2020 (press release).

<sup>28</sup> “Monetary Policy Decisions,” see the discussion *supra* at section B.

<sup>29</sup> “HM Treasury and the Bank of England launch a Covid Corporate Financing Facility (CCFF),” Bank of England, 17 March 2020, <https://www.bankofengland.co.uk/news/2020/march/hmt-and-boe-launch-a-covid-corporate-financing-facility>.

<sup>30</sup> For safeguards mitigating the risks of banks' lending business, see “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems,” Basel Committee on Banking Supervision, December 2010, revised June 2011, <https://www.bis.org/publ/bcbs189.pdf>.

<sup>31</sup> The exact coverage of the loans is still unclear. As of May 2020, small and very large loan amounts are excluded from the guarantee; see “Chancellor strengthens support on offer for business as first government-backed loans reach firms in need,” HM Treasury, <https://www.gov.uk/government/news/chancellor-strengthens-support-on-offer-for-business-as-first-government-backed-loans-reach-firms-in-need>.

as the Eurosystem and had to recur to measures beyond interest rate control. It stepped up its efforts to provide Japan's financial market with liquidity, reduce rising yields on Japanese sovereign debt, and stabilize investment markets.<sup>32</sup> Under its new lending program, the Bank of Japan lends to commercial banks for zero interest and with maturities of up to one year against collateral consisting of corporate debt. With this unconventional move that gives banks free access to funding and in exchange for collateral whose quality is well below the standards ordinarily applied under the requirement of adequacy, the Bank of Japan intends to give businesses easy access to cheap bank loans. More extraordinary even, the Bank started to purchase exchange-traded funds (ETFs) and real estate investment trusts (REITs) in March 2020. This support for the investment fund sector comes in addition to the Bank's purchases of Japanese sovereign and corporate debt instruments with which the Banks seeks to reduce the yields on government and corporate bonds and therefore the government's and corporate sector's refinancing costs.

#### v. The Covid-19 Response in Singapore and Hong Kong

In Singapore and Hong Kong, the central bank responses are mild compared to the reactions in the West. The focus in these two small Asian jurisdictions is on fiscal measures and, in the case of Singapore, on cushioning the effects of the pandemic on pre-existing contractual obligations, above all loan agreements, for households and SMEs, and modifying the entry requirements and proceedings of corporate insolvencies.<sup>33</sup> This difference to the former examples of central bank Covid-19 measures results from the fact that Singapore is home to many SMEs operating in different sectors but lacks the corporate giants that exist in larger countries and which profit from central banks' massive securities purchasing program. Foreign corporations are active in Singapore, but the scale of their operations does not require them to raise large amounts of debt in Singapore's capital markets. The MAS can therefore focus its liquidity programs on a few larger local companies such as its three domestic banks.

The situation is similar in Hong Kong. The presence of foreign corporate giants is even more visible in Hong Kong than in Singapore, but these foreign corporations draw mostly on other markets to finance the bulk of their global activities and profit from the central bank measures in their home jurisdictions.

<sup>32</sup> For the following, see "Enhancement of Monetary Easing in Light of the Impact of the Outbreak of the Novel Coronavirus (COVID-19)" Bank of Japan, 16 March 2020; "Enhancement of Monetary Easing," Bank of Japan, 27 April 2020; and "Statement on Monetary Policy," Bank of Japan, 22 May 2020; all available at [https://www.boj.or.jp/en/mopo/mpmsche\\_minu/index.htm/](https://www.boj.or.jp/en/mopo/mpmsche_minu/index.htm/).

<sup>33</sup> See the *Covid-19 (temporary measures) Act 2020* (no. 14 of 2020); see also Tan and Wang, Chapter 25, this volume.



Hong Kong started in October 2019 to facilitate bank lending to SMEs,<sup>34</sup> reacting to the fact that Hong Kong's businesses faced difficulties before the Covid-19 outbreak. Hong Kong's bank regulator and central bank, the Hong Kong Monetary Authority (HKMA) eased regulatory requirements for banks to ease the burden stemming from prudential bank regulation and therefore the banks' costs from SME loans whose risks increased as a result of the weakening economy.<sup>35</sup> This move was facilitated by a guarantee scheme under which the Hong Kong Mortgage Corporation Limited (HKMCI) guarantees parts of the bank loans extended to SMEs in Hong Kong.<sup>36</sup> This support for the SME sector was further increased in April 2020. Comparable to the rest of the world, the HKMA expanded its lending facilities to banks to provide them with cheap and generous access to liquidity.<sup>37</sup> Similar programs for SMEs are in place in Singapore.<sup>38</sup>

Furthermore, since Singapore's MAS and Hong Kong's HKMA target exchange rates, they face difficult choices in the current economic environment. Easing their currencies increases the competitiveness of their export products, but also raises import prices which hurts the general public in markets that heavily rely on imports for the vast majority of their consumer goods. When the Singapore dollar appreciated in the early stages of the crisis, the MAS took a stance in favour of its export industry and started value-depreciating measures.<sup>39</sup>

### 3. Why This Crisis Is Different and Exceptionally Worrying

Unlike the GFC, the Covid-19 crisis did not start as a banking or financial-sector crisis but as a health pandemic that has escalated into a global economic crisis affecting all parts of the economy. As in all economic crises, the central banks are at the forefront of crisis management, and their contributions are important. Central banks can mitigate the side-effects of this crisis. Their strongest weapon,

<sup>34</sup> "The banking sector sets up a coordination mechanism to support small and medium-sized enterprises (SMEs)," HKMA, 16 October 2019 (press release).

<sup>35</sup> "How does the HKMA help banks support their customers?" Riding Out the COVID-19 Challenge, HKMA, <https://www.hkma.gov.hk/eng/key-functions/banking/banking-regulatory-and-supervisory-regime/riding-out-the-covid-19-challenge/>.

<sup>36</sup> For details, see "SME Financing Guarantee Scheme," HKMCI, [http://www.hkmc.com.hk/eng/our\\_business/sme\\_financing\\_guarantee\\_scheme.html](http://www.hkmc.com.hk/eng/our_business/sme_financing_guarantee_scheme.html).

<sup>37</sup> "SME Financing Guarantee Scheme"; see also "Liquidity Facilities Framework," HKMA, 3 April 2020, <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2020/04/20200403-4/> (press release).

<sup>38</sup> See Tan and Wang, Chapter 25, this volume. See Chapter 25 for similar support measures in Malaysia and China. Note that Singapore has not disclosed how its relief measures are counter-financed, especially whether the banking or public sector is supposed to shoulder the resulting financial burdens.

<sup>39</sup> Aw Cheng Wei, "'Sufficient room' for Singdollar to ease within current policy stance in face of coronavirus outbreak: MAS," *Straits Times*, 5 February 2020.

unlimited supplies of liquidity, can help in a pandemic as it helped in any other financial and economic crisis. Central banks replenish dried-up markets for liquidity, thereby ensuring that liquidity shortages, especially in the banking and wider financial sector, do not escalate into solvency issues. By providing banks with as much cheap or even free cash as they need, central banks ensure that banks' fractional reserve policy, and even potential runs on banks, will not bring down solvent banks. With central banks guaranteeing that liquidity markets can function smoothly, insecurities in money markets are eased, volatilities are reduced, and markets can return to normality. Central bank measures therefore help to prevent an economic crisis from escalating into a financial (stability) crisis.

As long as banks continue to operate normally, there is also hope that they allocate the myriad of cash forced on them in accordance with central banks' policy goals. If central bank cash comes with purpose conditions for banks and can be used only for cheap loans or credit relief measures such as free loan extensions and interest cuts for households and businesses (especially SMEs with no access to capital markets), then central bank liquidity reaches all parts of the economy and leads to the intended mitigation of the crisis. The same allocation of central bank liquidity is achieved under the SME loan guarantee schemes under which governments provide supporting guarantees for bank loans to SMEs because they result in risk-free lending of banks and therefore cheap loans for the beneficiaries of these subsidized lending schemes.<sup>40</sup>

Purchases of financial instruments pour additional liquidity into markets in very direct ways because central banks transact with a wide range of holders of these instruments and do not rely on the intermediation function of banks. Such purchases stabilize markets for such instruments. They keep markets liquid, reduce the volatility of these instruments, and mitigate the risk of insolvency of holders of these instruments that could result from substantial price drops. However, these securities purchase programs benefit only big corporations because SMEs hardly issue traded debt securities, which explains the additional focus on lending programs for the SME sector.

Central banks' purchases in bond markets have so far shown their intended effects. Prior to central banks' interventions and after it had become clear how seriously the Covid-19 pandemic affected the global economy, corporate and sovereign bond yields went up, even those of top-rated sovereign bonds like German Bunds. The Eurosystem's measures led immediately to stabilization and

<sup>40</sup> Such fiscal guarantees for SME loans are not only in place in the United Kingdom and Hong Kong (as mentioned in this chapter, section 2C) but also in many other jurisdictions. For another example, see the German model in "German government to guarantee 100 percent of loans to smaller firms in coronavirus aid package," *The Local*, 6 April 2020, <https://www.thelocal.de/20200406/german-government-to-guarantee-100-percent-of-loans-to-smaller-firms-in-coronavirus-aid-package>.

falling yields; the same could be observed in other markets where central banks intervened.

However, not all is good. It should not be forgotten that aggressive expansionary monetary policy transactions come at a price. They increase reliance and dependency of the financial sector and economy on central banks' intervention and expose central banks to the risk of loss when their debtors, especially borrowing banks, default on their repayment obligations. Central banks' expanded balance sheets also entail the risk of inflation, especially of assets not included in the basket of consumer goods by which central banks calculate their official consumer price indices, e.g., real estate prices.

Furthermore, central bank measures provide the right solutions when risks from fractional reserve banking materialize or cheap credit is required to jumpstart an ailing economy. However, liquidity shortages and economic slowdowns are only by-products of the current crisis. When production lines are stopped and services cannot be offered because supply chains have collapsed, workers stay home, and customers stay away from businesses, then liquidity support helps entrepreneurs only to a limited extent. Cheap loans temporarily replace their lost income but also increase their indebtedness at a time in which they are generating little or no income and their businesses are falling apart.

Traditionally (and for very good reasons), central banks limit their intervention to liquidity supply. In contrast, fiscal authorities occasionally purchase equity instruments issued by (usually big and systemically important) ailing companies. The straining effect of such bailouts on the public budget increases the longer a crisis lasts. Central banks can support fiscal authorities' rescue measures indirectly by keeping secondary markets in sovereign debt instruments liquid, but it is evident that markets artificially maintained by central bank liquidity support and businesses kept afloat by governments' rescue measures are, in the longer term, an unsustainable development.<sup>41</sup>

The Covid-19 crisis is not the first that tests the limits of central banks' willingness to "do what it takes" to support financial markets, economies and governments. During the GFC, the Fed was heavily criticized for purchasing financial instruments that had become untradeable in an attempt to help financial institutions survive the crisis or facilitate mergers and other restructurings of the financial industry.<sup>42</sup> The Eurosystem's unconventional monetary policy

<sup>41</sup> For a particularly gloomy outlook on our economic and financial future, see Patricia Kowsmann, Margot Patrick, and Giovanni Legorano, "The Bank Backstop: Can Europe's Lenders Weather the Coronavirus Crisis?" *Wall Street Journal*, 14 April 2020.

<sup>42</sup> The Fed pursues two objectives: internal price stability and full employment; see S. 2A of the *Federal Reserve Act*, which reads: "The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates."

operations were repeatedly subjected to judicial reviews by the Court of Justice of the European Union and national courts of Eurozone members states.<sup>43</sup> In both instances, the allegations read that the two central bank systems operated outside their mandates because mass support for the financial industry had little to do with the Fed's "double mandate" of internal price stability and full employment, and the Eurosystem's de facto creation of secondary markets for debt instruments issued by highly-indebted Eurozone countries was incompatible with its primary objective of internal price stability.<sup>44</sup>

However, the Covid-19 crisis responses eclipse the past GFC measures. The volumes of purchases of sovereign and corporate debt instruments are a multitude of those during the GFC and the interest-free loans extended to banks for liquidity support for SMEs and households with government backing are a novelty. With its purchases of EFTs and REITs, the Bank of Japan indirectly supports equity investments in corporations and Japan's real estate market<sup>45</sup> and thereby crosses a line drawn by traditional central banking. Reports about developments in Indonesia and the Philippines indicate an even more drastic departure from traditional central banking. The central banks of these two Asian countries started buying their governments' bonds in the primary markets in March 2020, thereby financing the government budgets directly with central bank money.<sup>46</sup> The risks are obvious. The government budget is no longer financed by market investors who base their independent investment decisions on debt sustainability assessments but by the money-creation powers of central banks that are evidently adhering to the instructions of

<sup>43</sup> The European Court of Justice was repeatedly called upon to rule about the legality of the Eurosystem's unconventional monetary policy programs; see the judgments C-62/14 *Gauweiler v. Deutscher Bundestag* EU:C:2015:400; C-493/17 *Proceedings brought by Weiss* EU:C:2018:1000; C-370/12 *Pringle v. Ireland* EU:C:2012:756. See also the recent and controversially received judgment of the German Constitutional Court BVerfG, *Judgment of the Second Senate of 5 May 2020* – 2 BVR 859/15.

<sup>44</sup> For the reception of the Fed's GFC crisis management, see José Gabilondo, "Central banks, systemic lending and collateral markets," in Matthias Haentjens and Bob Wessels eds., *Research handbook on crisis management in the banking sector* (Cheltenham: Edward Elgar Publishing, 2015), 24–41; Mark Carlson, Burcu Duygan-Bump, and William Nelson, "Why do we need both liquidity regulations and lender of last resort? A perspective from Federal Reserve lending during the 2007–09 U.S. financial crisis," *Finance and Economics Discussion Series no 11* (Washington DC, 2015), 1–37.

<sup>45</sup> These purchases are no novelty for the Bank of Japan, which started its EFTs purchasing programs in 2010 (see Sayuri Shirai, "Bank of Japan's exchange-traded fund purchases as an unprecedented monetary easing policy," Asian Development Bank Institute Working Paper Series, no. 865–2018), but the volumes under its Covid-19 crisis response have massively increased.

<sup>46</sup> See "Latest Economic Developments and BI Measures against COVID-19," Media Room, Bank Indonesia, 28 May 2020, <https://www.bi.go.id/en/ruang-media/info-terbaru/Pages/Perkembangan-Terkini-Perekonomian-dan-Langkah-BI-dalam-Hadapi-COVID-19-28-Mei-2020.aspx>; Shotaro Tani and Narayanan Somasundaram, "Indonesia and Philippine central banks cross the Rubicon," *Nikkei Asian Review*, 20 May 2020; Ditas B. Lopez and Siegfried Alegado, "Philippine Central Bank Reassures Investors over Bond Buying," *Bloomberg*, 4 June 2020; Adrian Akhlah, "Bank Indonesia buys US\$11.2b in govt bonds to support rupiah, financing needs," *The Jakarta Post*, 30 April 2020.

governments, a development that might escalate in severe loss of confidence in affected currencies.

On the one hand, one might be inclined to praise central banks for their swift and decisive crisis management that has (so far) prevented an escalation of a severe economic crisis into a financial stability crisis. On the other hand, the volumes of these measures have led to unprecedented expansions of money in practically all markets around the globe, which entails a substantial risk of inflation and raises the question of how central banks intend to reverse this expansion without triggering financial stability concerns. What makes the situation dangerous is the fact that central banks' expansions of money supply are combined with exorbitant new amounts of sovereign debt. As a result, central banks' hands appear tied for a very long time because tightened monetary policies would unavoidably lead to reduced investments in sovereign and corporate debt. Furthermore, it is unclear how and when sovereigns can be expected to pay back (parts of) their vast amounts of newly accumulated debt. In combination, these uncertainties create a toxic environment for economic recovery. Fears loom that what started as a decisive rescue mission might trigger currency and sovereign debt issues in economically weaker parts of the world.

#### 4. Outlook

In the current crisis, central banks find themselves in an ambiguous situation. On the one hand, they are better prepared than they were thirteen years ago when the GFC erupted and required them to provide approximately USD 4 trillion in liquidity to financial markets globally.<sup>47</sup> No blueprint for that crisis scenario existed, and central banks did not have much time to develop mechanisms to counter the massive failures seen in the financial sector in the years 2007–2009. It could therefore be argued that because of their recent experience, central banks are well prepared to deal with this new crisis.

On the other hand, no two crises are ever the same, and this is especially true for the Covid-19 crisis, that comes with unprecedented challenges. Financial markets and economies are not the triggers of this crisis as they were in many previous crises when central banks had to react swiftly and forcefully; instead, they have fallen victim to a pandemic that paralyzes society, trade, and business globally. It could even be argued that central banks entered the Covid-19 crisis battle from a position of weakness. Since the outbreak of the GFC, central banks

<sup>47</sup> D. Domanski, R. Moessner, and W. Nelson, "Central banks as lender of last resort: experiences during the 2007–2010 crisis and lessons for the future," Federal Reserve Board Finance and Economics Discussion Series Working Paper no. 110 (Washington DC, 2014), 2.

have kept liquidity supplies high; vast amounts of private and public debt threatened financial stability, and deflationary tendencies in developed economies jeopardized economic growth even before the outbreak of Covid-19. Liquidity is central banks' conventional weapon, but it is no sufficient remedy in a lockdown crisis that paralyzes businesses in unprecedented ways.

Asia was less affected by the GFC than Europe and the United States, where the crisis escalated and costs exploded. Asia felt the shock waves when the European and US economies contracted sharply, but in comparison to their Western counterparts, the financial implications for Asia looked manageable. The Covid-19 pandemic knows no such differences. It has hit Asia as badly as Europe and the United States, and all Asian countries are facing the same challenges and risks. Overreliance on the powers of money creation jeopardizes the role of central banks as guardians of monetary stability, and exorbitant fiscal rescue packages may lead to unsustainable amounts of public debt. Caught in a pandemic of dramatic magnitude, Asia, Europe, the United States, evidently the whole world, must brace against a potential escalation of the situation into a monetary and sovereign debt crisis if infection rates and severity of disease symptoms require further long-term lockdown measures.



PART II  
EMERGENCY POWERS





# Governing through Contagion

Lynette J. Chua\* and Jack Jin Gary Lee\*\*

## 1. Introduction

As SARS-CoV-2 ravaged one territory after another, government after government imposed strategies of control to contain the virus and block its path of destruction. The other chapters in this volume describe some of these strategies in length. Driven by law and other kinds of technologies, strategies of control—prevention, containment, enforcement, and education—extend to micro conduct such as where people may sit or stand in public and whom they may touch.

These strategies of control recursively produce what we call “governing through contagion.” Flexing power over life,<sup>1</sup> governing through contagion regulates subjects of a population to ensure their bodies are free from contagion, do not spread contagion to fellow subjects, and stay economically productive—or at least, avoid incurring economic costs of medicine and containment. Such power over life comprises three interlocking modalities of power: juridical modality, which prohibits, permits, and prescribes subject behaviour with bodily and fiscal sanctions; disciplinary modality, which shapes subject morality, so that they perform what must be done and refrain from what must not be done<sup>2</sup> because (not) doing so is good and correct; and security modality, which calibrates and coordinates social relationships to procure outcomes at the collective level of population, a managed, composite reality of individual subjects.<sup>3</sup>

Each of the three modalities engages law, surveillance, medicine, and other technologies, perhaps relying on one type more than others, to achieve its particular result, such as compliant or moral subjects. However, the paramountcy of governing through contagion is the goal of the third modality—by harnessing all

\* Associate Professor, Faculty of Law and Yale-NUS College, National University of Singapore.

\*\* Visiting Assistant Professor of Sociology and Legal Studies, Kenyon College.

<sup>1</sup> Michel Foucault, *The History of Sexuality, Volume 1: An Introduction*, trans. Robert Hurley (New York: Random House, 1990).

<sup>2</sup> Michel Foucault, *Security, Territory, Population: Lectures at the College de France, 1977–1978*, trans. Graham Burchell (New York: Picador, 2007), 45–46.

<sup>3</sup> Foucault developed the concept of security in his lectures after *History of Sexuality*, in which he used “regulatory controls” instead of “security” to refer to power concerned with regulating the life of populations. Foucault, *Security, Territory, Population*, 6 n.5.

three modalities to produce security outcomes. Almost always economic objectives that legitimize a political order, their specific contents depend on the social relationships that the security modality manages—among humans, as individual subjects, as population, as actors of the state governing that population, other living beings, and the non-living.

In this web of relationships, governing through contagion battles its enemy, contagion. Though unhuman, the contagion possesses agency, for it can profoundly change human culture, down to the ways humans feed, earn, and emote.<sup>4</sup> Because contagion bears the power of death, a potency to wreck and torment the human body unto death, it legitimizes governing through contagion to “invest life through and through.”<sup>5</sup>

Governing through contagion, therefore, is about the administration and politics of strategies of control to combat contagious diseases. Governing through contagion produces and emerges from the web of human and non-human relationships, which especially include the contagion, as well as law and other technologies that have enabled the contagion, empowered strategies of control, and allowed for relief and resistance. It is a cumulative process with history and memory, but shifts in direction and reach, as the relationships and thus strategies of control relate and respond to contagions of a given time and place. The state usually takes charge of but does not have dominion over governing through contagion. When put in motion, governing through contagion imbues human subjects, their non-human co-species, and technologies with agency, each having the capacity to transform their interconnected fates.<sup>6</sup>

The more serious the contagion’s afflictions are perceived by the state and population, the more likely the response will be extensive and lead to the totalization of power over life. In its totalized form, governing through contagion more than addresses the physical maladies of the contagion. It reaches into the psychological and emotional, retooling the morality of subjects and culture of their population. It extends to tackling the economic ailments of contagion, such as

<sup>4</sup> Non-human agency is well theorized in science and technology studies. See, e.g., Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (New York: Oxford University Press, 2005); Karen Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* (Durham, Duke University Press, 2007); Donna J. Haraway, *Staying with the Trouble: Making Kin in the Chthulucene* (Durham: Duke University Press, 2016).

<sup>5</sup> Foucault, *History of Sexuality*, 139. Our concept of power over life takes off—but deviates—from Foucault. Like Foucault, we recognize the interlocking nature of the three modalities of power; unlike him, we treat law as a formidable technology potentially central to all three modalities, and not primarily in what Foucault describes as juridical or sovereign power in *Security, Territory, Population*. In addition, we draw from science and technology studies, which emphasizes non-human agency (see n. 4).

<sup>6</sup> Compare Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2007).

loss of wages, unemployment, and business disruptions. At life's end, governing through contagion modulates the meaning and handling of death.

In other words, governing through contagion is an acute form of somatocracy, a regime that regulates subjects' health, extending beyond treating the diseased individual to the entire population's hygiene, housing, and lifestyle<sup>7</sup> to eradicate epidemics, reduce mortality rate, and prolong lifespan.<sup>8</sup> The effects of such a hyper-somatocracy may linger past a contagious episode. They may become endemic within a population and the state, especially where some degree of somatocracy exists between contagious episodes, and may break out when contagion calls again.

In many territories, the legal strategies of control in response to the Covid-19 pandemic, such as quarantine orders and movement restrictions, grew out of earlier episodes of contagion that significantly shaped governing through contagion. Particularly poignant examples are former British colonies, including territories surveyed in this volume, India, Sri Lanka, Hong Kong, Malaysia, Myanmar, and Singapore. These post-colonies have inherited, modified, and enhanced strategies of control from the colonial era, mobilizing them for recent episodes of contagion.

In this chapter, we introduce three themes of governing through contagion: centralization and technology of law, normalization and technologies of moralization, and *inter/dysconnectedness* and the rearticulation of difference. Our analysis draws on historical ethnography of one British post-colony, Singapore, situated in three contexts: the colonial era (particularly 1868–1915), which was troubled by numerous epidemics such as plague, cholera, and smallpox; the 2003 Severe Acute Respiratory Syndrome (SARS) outbreak; and the Covid-19 pandemic.<sup>9</sup> While these themes may vary in relevance or degree elsewhere, we offer them as research directions on governing through contagion. We focus on the colonial, SARS, and Covid-19 periods, because they demonstrate how strategies of control were formed, consolidated, and advanced, and they vividly illustrate the three themes, allowing us in this short chapter to effectively sketch out governing through contagion. Contagious

<sup>7</sup> Michel Foucault, "The Crisis of Medicine or the Crisis of Antimedecine," trans. Edgar Knowlton Jr., William J. King, and Clare O'Farrell, *Foucault Studies* 1 (2004): 5–19.

<sup>8</sup> Michel Foucault, "The politics of health in the eighteenth Century," trans. Richard A. Lynch, *Foucault Studies* 18 (2014): 113–127.

<sup>9</sup> We examined Colonial Office archives, Singapore Parliament's Hansard, other government statements, posters, photographs, legislation, bills, subsidiary legislation, regulations, and media reports. In our larger project comparing colonial empires and post-colonies, we will further develop the themes of governing through contagion.

diseases did not halt, nor did strategies of control lie dormant in between the three periods.

## 2. Theme 1: Centralization and Technology of Law

The mode and degree of centralization of state infrastructures strongly influence the development of governing through contagion. State infrastructures of governing through contagion include law-making and enforcement institutions that design and implement legal strategies of control. Centralized state infrastructures enable rapid and intense responses to contagious episodes, deploying law to prevent, contain, detect, and treat the afflictions caused by a contagion and to boost other technologies that propel complementary control strategies. The more centralized state infrastructures are, the more totalizing governing through contagion can become. One critical feature is the manner and speed by which state infrastructures can transpose legal strategies of control from one contagion to the next. Another critical feature is the degree of closeness between the legislature and executive.

Singapore exemplifies highly centralized state infrastructures with the potential to achieve totalization. Throughout roughly 150 years of its colonial and post-colonial history, the executive has played the central role in governing through contagion. Endowed by primary legislation passed efficiently by the legislative body, the executive prescribes copious details of legal controls, nimbly mobilizes personnel for enforcement, and expeditiously revises these orders and directives, as the contagious situation changes.

Singapore's colonial era, particularly the formative years of 1868–1915, laid the foundation for fast, coordinated responses to the menace of contagion and seeded the totalization over time. After becoming a British trading post in 1819, the territory fell under British control and eventually became part of the Straits Settlements. In 1867, when the Straits Settlements was reconstituted as a Crown Colony, Singapore joined a network of law-making and administration centred in the Colonial Office and sprawled across the empire. On the ground, the governor of the Straits Settlements dominated law-making. He nominated members of the Legislative Council, which passed laws with guidance from his officials and a small number of European and Asian merchants.

In the Straits Settlements, governing through contagion aimed to secure the British Empire's riches and authority. The empire consisted of different communities that had to be treated differently, a logic of social division and hierarchy that maintained the legitimacy of colonial rule with the British at the top. Differentiated populations in the colonies produced wealth and prestige for the imperial centre. Governing through contagion in the Straits Settlements, hence, sought to protect the colony's public health, defined at a collective level, to ensure the smooth functioning and stability of this economic and political order.

The Straits Settlements' 1868 Quarantine Ordinance set the precedent for Singapore's model of governing through contagion by swift executive action.<sup>10</sup> The ordinance granted the governor, in conjunction with his Executive Council (Governor-in-Council), powers to regulate incoming vessels with diseased persons or animals, and outbreaks on land. Subsequently, the 1886 Quarantine and Prevention of Disease Ordinance (QPDO) replaced the 1868 ordinance, extended the Governor-in-Council's powers to isolating and removing infected humans and non-humans,<sup>11</sup> and empowered officers to detain and arrest suspected offenders without warrant. Enacted to curb a rabies scare, when "mad dogs" from Europe arrived at Singapore's seaports and spread hydrophobia to humans through their bites, the 1886 QPDO most likely targeted the colony's dog-owning European inhabitants.<sup>12</sup> Perhaps that was why it did not allow Governor-in-Council orders to take immediate effect but gave the Legislative Council six weeks to review them.

Whatever the reservations for limiting gubernatorial powers, they retreated as animal-borne contagions harried Singapore. In 1894, the bubonic plague, typically transmitted from rat fleas to humans, broke out in China and Hong Kong. Faced with ships of Chinese immigrants landing daily, the colonial government hurriedly changed the law so that Governor-in-Council orders could promptly be effected to prevent and contain contagion and carry out enforcement.<sup>13</sup>

From 1868 to 1915, a patchwork of laws, regulations, and directives grew out of such never-ending, recursive relationships among humans, critters, germs, and the state. By 1915, the governor's near-absolute domination over law-making had completed the infrastructural scaffolding for a centralized approach to contagious threats. The new QPDO of 1915 combined the legal controls into a single legislation, enlarged quarantine powers, and introduced stricter movement restrictions on infected persons.<sup>14</sup>

Later renamed the Quarantine and Prevention of Disease Act (QPDA), the 1915 QPDO provided the legislative basis for Singapore's governance of contagion until 1976. In the post-colonial era, governing through contagion aims at securing the prosperity of the nation, comprising a population of diverse subjects nevertheless united by the identity of "Singaporean." Governing through contagion tries to insure the population's well-being, so each subject is a resilient and productive member.

<sup>10</sup> *Quarantine Ordinance*, Straits Settlements no. 7 of 1868, modelled after the Ceylon Ordinance no. 8 of 1866.

<sup>11</sup> *Quarantine and Prevention of Disease Ordinance*, Straits Settlements no. 19 of 1886.

<sup>12</sup> "Mad dogs," *The Straits Times*, 26 June 1884.

<sup>13</sup> *Prevention of Disease Ordinance*, Straits Settlements no. 7 of 1894.

<sup>14</sup> QPDO no. 33 of 1915.

Even though decolonization transformed Singapore's state infrastructures into a Westminster parliamentary government, post-colonial legislators and executives reworked the colonial scaffolding for governing through contagion and pushed it toward totalization. Moreover, post-colonial Singapore has effectively been a one-party state. Since 1965, the People's Action Party has dominated the parliament and cabinet, strengthening the fusion between the legislature and executive and further centralizing state infrastructures that could quickly respond to public health crises, such as SARS.

The spread of SARS from China and Hong Kong launched the next critical phase of governing through contagion. Although not the epicentre of this international epidemic, Singapore was badly affected, with 238 probable cases and 33 deaths. Until the arrival of the SARS-CoV virus, Singapore's legal controls against contagion maintained a revised QPDA framework in the Infectious Diseases Act (IDA). In 1976, in the wake of malaria and typhoid epidemics, the IDA replaced the QPDA to deal with post-colonial conditions of international trade and travel. However, the IDA reinforced colonial strategies of control, remaining essentially unchanged for twenty-seven years.<sup>15</sup>

In 2003, the lethality of the SARS virus precipitated two rounds of legislative amendments. Layered on the colonial foundation, the amendments enhanced the ability of state infrastructures to govern through contagion to the point of totalization. The March 2003 amendments consolidated medical-related functions of the investigation, prevention, and containment of outbreaks, previously shared with environmental agencies, within the Ministry of Health (MOH), and expanded the definition of "health officers" to redeploy personnel easily for enforcement work.<sup>16</sup> The April 2003 amendments widened the scope of quarantine from hospitals and other "suitable" locations to "home quarantine"; allowed MOH to restrict the entry of persons and goods into public or private premises; punished anyone who knew or suspected they were suffering from an infectious disease for being in public and exposing others (save for going for medical treatment); and increased the penalties for offenders.<sup>17</sup>

During the SARS period, therefore, Singapore's state infrastructures were focused on using law to compel subjects to stay put. Some legislators expressed concern about the draconian nature of the new amendments, but still supported them out of necessity to protect the public.<sup>18</sup> Seventeen years later, at the height

<sup>15</sup> Between 1976 and 2003, the IDA was occasionally amended in minor ways to deal with new diseases, most significantly the Human Immunodeficiency Virus, which did not call for quarantine measures. We will examine the HIV/AIDS epidemic in our larger project.

<sup>16</sup> *Singapore Parliamentary Debates: Official Report*, vol. 76, 21 March 2003.

<sup>17</sup> *Singapore Parliamentary Debates*, vol. 76, 25 April 2003.

<sup>18</sup> *Singapore Parliamentary Debates*, vol. 76, 25 April 2003.

of the Covid-19 pandemic, whatever little discussion there was about the harshness of such laws in the SARS period had, by and large, disappeared.

The first Covid-19 case appeared in Singapore on 31 January 2020.<sup>19</sup> Over the next two months, returning Singaporeans and residents were put on Stay-Home Notices issued under the IDA. Short-term visitors were increasingly and then totally banned from entering or transiting through Singapore.<sup>20</sup> With the number of confirmed cases rising, the prime minister on 3 April 2020 announced a “circuit breaker,” effectively a nationwide lockdown that prohibited gatherings, closed schools, recreational facilities, businesses, and most workplaces, mandated physical distancing, and permitted only activities classed as “essential services.”<sup>21</sup>

The Covid-19 pandemic marks the third critical phase of governing through contagion in Singapore, the most totalizing to date. In the two months leading up to the circuit breaker, MOH issued detailed regulations under the IDA to prescribe physical distancing requirements, crowd sizes, and telecommuting. Four days after the circuit breaker announcement, Parliament passed the *Covid-19 (Temporary Measures) Act* (CTMA), completing the requisite three readings in one sitting on a single day.<sup>22</sup> The first of many regulations under the CTMA, superseding those under the IDA, were published in the government gazette at 23:59 the same evening.<sup>23</sup>

Even though the CTMA broadened executive powers to restrict activities, and, like the IDA, compelled obedience with the force of criminal prosecution, it was predominantly economic legislation. Earlier, the government had introduced three support packages totalling almost SGD 60 billion and 12 per cent of its GDP.<sup>24</sup> The CTMA complemented the economic assistance by protecting businesses and individuals from inability to perform contractual obligations, or to pay damages, rent, or loans as a result of pandemic-related difficulties.

In the Covid-19 era of governing through contagion, legal controls, providing the backbone for other technologies to effect controls, have thus metastasized to the personal, public, and economic aspect of almost everyone’s lives. The government described its responses to Covid-19 as “whole-of-government.”<sup>25</sup> A Multi-Ministry Taskforce held regular press briefings on compliance and the latest infection rates.

<sup>19</sup> De Visser and Straughan, Chapter 15, this volume.

<sup>20</sup> Neo and Lee, Chapter 6, this volume.

<sup>21</sup> De Visser and Straughan, Chapter 15, this volume.

<sup>22</sup> *Singapore Parliamentary Debates*, vol. 94, 7 April 2020.

<sup>23</sup> *Covid-19 (Temporary Measures) (Control Order) Regulations 2020*, S254/2020.

<sup>24</sup> De Visser and Straughan, Chapter 15, this volume; Tan and Wang, Chapter 25, this volume.

<sup>25</sup> *Singapore Parliamentary Debates*, vol. 94, 3 February 2020.



Singapore's responses during its colonial, SARS, and Covid-19 periods suggest that legal technology progressively helped to totalize governing through contagion's reach. However, totalization does not expand chronologically in every socio-legal context. During the SARS period, ministers and parliamentarians raised concerns about the contagion's economic impact, but it was not so severe as to warrant special CTMA-style economic legislation.<sup>26</sup> In the colonial era, contagious outbreaks inevitably affected economic productivity, but, unlike post-independence Singapore, the colonial state did not actively engage in extensive industrial planning. Highly centralized infrastructures simply set the stage for legal technology to recede or advance according to the relationships among humans, contagion, and the state.

### 3. Theme 2: Normalization and Technologies of Moralization

Governing through contagion moralizes subjects, molding them into a type conducive to defeating the contagion and sacrificing for collective security. In the face of contagion, it must. For power over life to triumph over this power of death, subjects have to be controlled, be rendered controllable, desire to be controlled, and, ideally, control themselves.

In addition to legal technology, governing through contagion will likely resort to other technologies to implement strategies of control. At the very least, law would animate other technologies that contribute to subject moralization. They include technologies for prevention, such as masks, thermometers and other medicalized equipment, formalin, soap and other "hygiene" products, and rulers, sticky tape, and other physical distancing instruments; technologies of containment, for example, cordons, contact tracing apps, and quarantine stations like islands and wards; technologies that facilitate enforcement and education, such as surveillance, media, and telecommunication tools.

Once technology is engaged, it comes alive with agency, bringing consequences to humans and other things. It influences the pathways and transmission of contagion, generating and altering human relationships with one another, other creatures, the state, and technologies. By reshaping these relationships, technologies of governing through contagion produce moralized subjects.

The contents of morality may vary across contagious episodes, but moralization is always violent, urged on by the power of death whose violence is perhaps more patent and unrelenting. Both the state and its subjects participate in the

<sup>26</sup> The SARS economic relief package totalled SGD 230 million. *Singapore Parliamentary Debates*, vol. 76, 24 April 2003.

violence of moralization. The state deploys technologies to discipline subjects, often chasing after and beating the recalcitrant into submission with the combination of law, surveillance, and medicalized equipment. Subjects submit to these technologies. They follow the law, adopt medicalized equipment, allow themselves to be surveilled, and disseminate information on contagion and morality. They keep watch on fellow subjects, demand that they use the same equipment, ostracize those who refuse, and activate communication tools to shame and report the disobedient to law enforcement.

In its most totalized form, moralization is no longer openly violent, for the desired thinking, behaviour, and feelings have become normalized. Subjects accept and perform the morality required of governing through contagion, because they have come to believe doing so is the right thing, the moral thing for themselves and all fellow subjects. No longer do they question the violence, repercussions, and logic of these morals—now the normative baseline for all that is good. The subject is broken, broken in, and broken down,<sup>27</sup> remade into the ideal unit that can defeat the unhuman enemy and ultimately rescue the nation.

The three periods of governing through contagion in Singapore represent different types and levels of moralization, not all of which reach near totalization. Technological advancements certainly augment the potential to normalize morality. In the seventeen years between SARS and Covid-19, social media and smart phones have become almost ubiquitous in a technologized state like Singapore. Meanwhile, law remains the constant technology, updated and fortified, classifying the persons, spaces, and things submitted to control, and authorizing officials to prevent, contain, surveil, and enforce (see Theme 1).

Nonetheless, the contents and extent of moralization depend not solely on technological inventions. They correspond to contagion's nature, and human perceptions and experiences of contagion, including state logics of security. In short, moralization is entangled with human–non-human relationships.

During Singapore's colonial period, moralization was about "civilizing." The territory's British rulers regarded "native" subjects as culturally inferior and tried to correct social practices they believed could embolden contagion.<sup>28</sup> This era's moral subject shed stigmatized "native" habits, and obeyed the colonial government's control strategies, practicing "better" hygiene and staying put as ordered. Such moralization fit within the empire's self-proclaimed "civilizing mission," but it was also specifically to protect both the "native" and European public and secure the empire's economic and political order.

<sup>27</sup> Foucault, *Security, Territory, Population*, 56.

<sup>28</sup> Brenda S.A. Yeoh, *Contesting Space in Colonial Singapore: Power Relations and the Urban Built Environment* (Singapore: NUS Press, 2013).

To prevent the spread of contagion, sanitary officials employed hygiene technologies, such as cleaning chemicals to disinfect “native” dwellings, and Westernized sanitation systems to replace “Asian” sewage disposals.<sup>29</sup> They published information in vernacular languages to educate “natives” about contagion and hygiene habits they ought to adopt to defend against it.<sup>30</sup> Inspectors patrolled neighbourhoods to monitor and inculcate these habits, such as handwashing and refraining from spitting.<sup>31</sup> And, of course, legal technology stepped in to punish the wayward.

To contain contagion’s movement through the population, colonial officers set up quarantine facilities at places like Balestier Road and St. John’s Island. However, the colonized associated these early facilities with poor treatment and death, and refused to cooperate. They concealed cases and shifted diseased persons and corpses around, engaging in a game of cat and mouse with colonial rulers.<sup>32</sup> Apprehended evaders were scolded, charged for posing a public threat, and marched off to quarantine.<sup>33</sup>

Whereas governing through contagion in the colonial period focused on “civilizing” “natives,” SARS and Covid-19, respectively, established and reaffirmed the “socially responsible” subject. This moral subject uses medicalized equipment to monitor their health. Like their colonial counterparts, they practice “good” hygiene and isolate themselves to protect others from contagious exposure. They withstand the challenges of contagion and control strategies, take care of themselves and others, and thus secure the nation by staying healthy and economically productive.

The SARS outbreak was Singapore’s formative period for the socially responsible subject. When the SARS virus arrived, this subject arguably was not yet fully birthed. Fearful of the virus and the stigma of infection and distrustful of the process of detection and treatment, some Singaporeans evaded authorities.<sup>34</sup> When delivering his statement on the 2003 IDA amendments, the Health Minister described the new provisions against wilfully exposing contagion to the

<sup>29</sup> Yeoh, *Contesting Space*, 102.

<sup>30</sup> Kai Khiun Liew, “Terribly Severe Though Mercifully Short: The Episode of the 1918 Influenza in British Malaya,” *Modern Asian Studies* 41, no. 2 (2007): 242.

<sup>31</sup> Kai, “Terribly Severe.”

<sup>32</sup> Yeoh, *Contesting Space*, 121; Kah Seng Loh and Li Yang Hsu, “The Origins of Singapore’s Communicable Disease Centre: Hanging Fire,” *Kyoto Review of Southeast Asia* 26, Trendsetters (2019), <https://kyotoreview.org/issue-26/the-origins-of-singapores-communicable-disease-centre-hanging-fire/>.

<sup>33</sup> “Parade of Chetties: The Small-pox Outbreak in Market Street,” *The Straits Times*, 24 July 1911, at 7.

<sup>34</sup> Bertha Henson, “Save yourself, save others—obey Sars rules,” *The Straits Times*, 19 April 2003; Salma Khalik, “Sars Stigma Fears Remain,” *The Straits Times*, 10 October 2003.

public as “civic responsibility.” Other parliamentarians emphasized the importance of being socially responsible and the critical role of law in enforcing such conduct.<sup>35</sup>

In addition to legal technology, political leaders shamed the “socially irresponsible” on state-controlled media, such as a family who had been exposed to the virus but roamed around town against doctor’s orders.<sup>36</sup> Newspapers, broadcasts, and posters reminded the population to wash their hands with soap and monitor their temperature. The media photographed senior statesman Lee Kuan Yew and other parliamentarians taking their temperatures with thermometers before entering Parliament House.<sup>37</sup>

The infected and possibly infected were put under home quarantine and round-the-clock surveillance. Enforcement officers installed web cameras at their residences and made unscheduled house calls. The non-compliant had to wear an electronic tag.<sup>38</sup> Singaporeans wrote in to newspapers, berating fellow subjects to be responsible and practice “good” hygiene.<sup>39</sup>

By the end of the SARS period, what was not normal—constant handwashing, mask-wearing in public, repetitive temperature-taking, and the sanctity of social isolation—became normal.<sup>40</sup> Social responsibility became the morality of contagious times. The prototype of the moral subject required to govern contagion was constructed.

When the Covid-19 virus reached Singapore in January 2020, this subject was ready to spring into action. Challenged by an even more persistent, hard-to-predict unhuman, their moral compass, social responsibility, was dispatched to almost every cell of social life. The SARS episode arguably consolidated “social trust”<sup>41</sup> to fight contagion, a trust nurtured by and nurturing the moral subject to play their part. The Multi-Ministry Taskforce ended their regular press briefings by exhorting everyone to be socially responsible. Now endemic within government discourse, social responsibility is a norm that must be and must triumph above all else.

<sup>35</sup> Singapore Parliament, 25 April 2003.

<sup>36</sup> Tarn How Tan, “Time for Tough Action on Sars,” *The Straits Times*, 23 April 2003.

<sup>37</sup> “Checking of Temperature at Parliament House on Members of Parliament in Prevention of Sars,” Ministry of Information, Communications, and the Arts Collection, <https://www.nas.gov.sg/archivesonline/photographs/record-details/8ceab113-1162-11e3-83d5-0050568939ad>.

<sup>38</sup> Henson, “Save yourself”; Tan, “Time for Tough Action.”

<sup>39</sup> Grace Ling, Luping Lim, and Ee Leng Shiau, “Don’t panic over Sars, just follow guidelines,” *The Straits Times*, 5 April 2003; Helen Chen, “Help nurses win SARS war,” *The Straits Times*, 15 April 2003.

<sup>40</sup> Beng Huat Chua, “SARS Epidemic and the Disclosure of Singapore Nation,” *Cultural Politics* 2, no. 1 (2006): 77–95. Peggy Teo, Brenda S.A. Yeoh, and Shir Nee Ong, “SARS in Singapore: surveillance strategies in a globalizing city,” *Health Policy* 75, no. 3 (2005): 279–291.

<sup>41</sup> Nomi Claire Lazar, “Social trust in times of crisis: How we act in challenging times depends partly on how we expect others will act,” *The Straits Times*, 3 April 2020.

Technologies mightier than those in the SARS era legitimized, encouraged, and, whenever necessary, impelled the moral subject to proselytize, propagate, and persevere. Children, parents, and teachers had already cultivated the habit of temperature-taking—a requirement for students since the SARS days. Employers asked employees and visitors to measure and report their temperatures. Landlords and public agencies put up flyers on walls and the internet, reminding everyone to wash their hands frequently, check their body temperature daily, and stay home when sick.<sup>42</sup> Politicians shared similar messages on social media and WhatsApp.

As the virus wandered across Singapore and infection rates grew, subjects and their government stepped up the use of law and other technologies to ensure that social responsibility would be exercised by will or by force. Retailers and restaurants measured the legally required distances and stuck tape onto furniture and floors to dictate where customers should sit or stand. “Safe distancing ambassadors” patrolled markets and parks. A robot dog barked warnings at walkers and runners who breached the required physical distance. Businesses and public agencies demanded customers scan a QR code with their smart phones or let them scan government identification cards so that personal information could be recorded for contact-tracing purposes.<sup>43</sup>

Beyond the standard medical facilities at hospitals, university residences and hotels turned into quarantine stations for people possibly exposed to the virus. Migrant workers’ dormitories with high infection rates were declared and cordoned off as “isolation areas.”<sup>44</sup> Enforcers tracked the quarantined by their smart phones. In addition to making house calls, they sent phone messages to the quarantined, who had to reply within four minutes and, when required, immediately take and send photographs of their surroundings. The foolhardy were caught courtesy of their social media postings or surveillance cameras, investigated, and prosecuted.<sup>45</sup>

Of the three periods, Covid-19 comes closest to totalization, normalizing the morality required to govern through contagion. However, moralization does not necessarily progress chronologically. The breaking down and (re)building of the subject could escalate or decline, adjusting to human relationships, technologies of the day, and the contagion at the gates.

<sup>42</sup> For examples of these flyers, see De Visser and Straughan, Chapter 15, this volume.

<sup>43</sup> Private organizations may collect personal data for contact tracing purposes but must take precautionary measures in compliance with the Personal Data Protection Act. “Advisories on Collection of Personal Data for Covid-19 Contact Tracing and Use of SafeEntry,” Personal Data Protection Commission Singapore, <https://www.pdpc.gov.sg/help-and-resources/2020/03/advisory-on-collection-of-personal-data-for-covid-19-contact-tracing>.

<sup>44</sup> E.g., *Infectious Diseases (Declaration of Isolation Area) Notification 2020*, S248/2020.

<sup>45</sup> Shaffiq Alkhatib, “Singaporean who breached coronavirus stay-home notice to eat bak kut teh sentenced to 6 weeks’ jail,” *The Straits Times*, 23 April 2020.

#### 4. Theme 3: Inter/dysconnectedness and the Rearticulation of Difference

Inter/dysconnectedness is the world that conceives governing through contagion, the chaos that governing through contagion tries to subdue, and the issue of governing through contagion. Interconnectedness and disconnectedness accompany each other. Technologies link individuals and groups physically, spiritually, and economically; technologies divide them and the contagion inequitably, unjustly, and cruelly. Governing through contagion grapples with differences that have long infected a society before the contagious episode, practices difference to effect strategies of control, strives to overcome differences, and eventually must face up to new and old differences. Governing through contagion *is* difference, a manifestation of paradoxically bonded yet segregated humanity.

Contagion thrives on interconnectedness. Technologies of land and food exploitation invite contagion into human habitats and diet. Air, land, and sea conveyances transport humans to far-flung lands and communities and contagion to new populations. Labour importation and urban architectures pack coolies of the nineteenth century and migrant workers of the twenty-first century into dense quarters, turning dwellings into outbreak clusters.

Governing through contagion devises disconnectedness to disrupt such interconnectedness and gain advantage against the contagion. Quarantine and physical distancing measures separate the sick and possibly infected from the healthy. Border controls and lockdowns keep friends, families, and lovers apart. Masks and other protective gear obstruct visual, aural, olfactory, tactile, and linguistic intimacy.

Other forms of interconnectedness appear alongside the disconnectedness devised by governing through contagion. Strangers find their fates suddenly joined, having unwittingly encountered the contagion at the same place and time. Millions share the inescapability of mortality, fear for the contagion, and unhappiness as strategies of control upend familiar interconnections. They turn to technologies of their time, the same engaged by strategies of control—telegram, post, print media, phones, and the internet—to continue learning from one another, commiserating and laughing with one another, and transacting with one another.

Yet more disconnectedness is exposed, as governing through contagion disrupts interconnectedness and new forms of interconnectedness endeavours to overcome its interference. Such disconnectedness magnifies the dysfunctions of society, stratification, and inequalities entrenched long before contagion arrived. It reveals how contagion and governing through contagion might even have exacerbated them.

Although some people's constitutions make them fall prey easily to contagion, the under-classes are more vulnerable because they have less money and toil in jobs that expose them to the germ. Their undervalued, exploited, and often alien (and alienated) labour is a disconnectedness inherent in the interconnectedness of markets and economies upon which contagion thrives. In colonial Singapore, epidemics disproportionately affected Chinese coolies<sup>46</sup> and brothel workers.<sup>47</sup> Of the 238 probable SARS cases, about 68 per cent were women, while healthcare workers, most of whom were nurses (a feminized, gendered occupation), comprised around 41 per cent.<sup>48</sup> During the Covid-19 pandemic, migrant construction workers in Singapore could not adopt distancing measures in cramped and communal living quarters rented by their employers. Daily wage earners risk contracting the contagion, as they peddle and pedal "essential goods" to the white-collared tucked away working from home. Other labourers lose their jobs when business dries up and companies cut back, the interconnectedness of supply-and-demand chains interrupted by contagion.

As the state rolls out prevention and containment measures, the poor, less privileged, and alien and alienated, again, are often the first to suffer and suffer the worst of disconnectedness. The colonial government differentiated quarantine and treatment facilities along racial and class lines. It not only separated Europeans from "natives," but also drew distinctions among the latter. Coolies were expected to "rough it" and cook their own meals while serving quarantine, but upper-class, "decent Asiatic[s]" deserved the "courtesy" of cooked meals.<sup>49</sup> During the SARS period, "unskilled" foreign labourers were forced into quarantine upon entry, but "professional" foreigners could self-quarantine.<sup>50</sup> Under lockdown during the Covid-19 pandemic, live-in foreign domestic workers were confined to their employers' houses and possibly ended up working non-stop, forbidden to go out for social activities on their weekly day off;<sup>51</sup> the poor, geriatric, and differently abled lacked the means to buy or operate digital equipment,

<sup>46</sup> Yeoh, *Contesting Space*, 93.

<sup>47</sup> James Francis Warren, *Ah Ku and Karayuki-san: Prostitution in Singapore, 1870–1940* (Singapore: Singapore University Press, 2003).

<sup>48</sup> Hoe-Nam Leong et al., "Clinical and laboratory findings of SARS in Singapore," *Annals of the Academy of Medicine, Singapore* 35, no. 5 (2006): 334.

<sup>49</sup> Straits Settlements Quarantine Inquiry Commission, "Proceedings of the Commission appointed to inquire into the working of the Quarantine and Prevention of Disease Ordinance in the Settlement of Singapore, in the Colony of the Straits Settlements, Volume II: Evidence and Appendices," Appendix in *Proceedings of the Legislative Council of the Straits Settlements for the Year 1912 with Appendix* (Singapore: Government Printing Office, 1913), 334. CO 275/88.

<sup>50</sup> Teo, Yeoh, and Ong, "SARS in Singapore," 282.

<sup>51</sup> Yan Han Goh, "Coronavirus: Foreign Domestic workers must stay home on rest days, says MOM," *The Straits Times*, 11 April 2020.

disadvantaging them in continuing their education, maintaining employment, and even obtaining daily necessities through the internet.<sup>52</sup>

Dysconnectedness further pervades enforcement strategies. Among colonial subjects, coolies could do little about the high-handedness of enforcers. They were prosecuted and punished for running away from squalid quarantine facilities. By contrast, when “Chetties,” a South Indian mercantile community, complained about their quarantine conditions (for smallpox), they gained sympathy from European and Asian elites.<sup>53</sup> The colonial government launched an inquiry, which led to the construction of new facilities with differently classed wards for Europeans and upper-class Asians.<sup>54</sup>

Governing through contagion in the Covid-19 era rearticulates the “rule of colonial difference,” producing new permutations under changed conditions of national sovereignty.<sup>55</sup> The privileges and status of Singaporeans become defined against those of alien, predominantly brown-skinned, labourers, on the one hand, and foreign, usually light-skinned, “professionals,” on the other. Instead of coolies, there are now migrant workers. Instead of upper-class merchants, there are now expatriates. Police and robots surveil blue-collar migrants sequestered in crowded dormitories. Enforcement officers patrol public housing estates where the majority of Singaporeans live, shooing away the elderly who linger around their favorite coffee stalls and questioning the recalcitrant few who venture outside bare-faced. Meanwhile, migrant labourers commonly known as “expats” flout physical-distancing and mask-wearing rules in lightly monitored, private neighbourhoods.<sup>56</sup>

Beyond exposing and exacerbating the disconnectedness of gender, class, ethnic, nationality, and other inequitable divides, governing through contagion embodies inter/dysconnectedness in the making of the moral subject suited to combatting the contagion of the day. It requires all subjects to unite by acting “morally,” exalts the compliant, and casts out the immoral (whose ostracization likely contains underlying tones of classism, racism, or xenophobia). Punished by law and repudiated by other technologies, the immoral subject—the socially irresponsible in the Singaporean case of Covid-19—is wrenched from webs of

<sup>52</sup> Anthea Ong, “Commentary: Covid-19 has revealed a new disadvantaged group among us—digital outcasts,” *CNA*, 31 May 2020, <https://www.channelnewsasia.com/news/commentary/covid-19-has-revealed-digital-divide-literacy-singapore-12783252>.

<sup>53</sup> “Hospitals and Isolation: Reasons Why Natives Hide Smallpox, Miseries Suffered in Hospital and Camp,” *The Straits Times*, 27 July 1911, at 7.

<sup>54</sup> Loh and Hsu, “The Origins.”

<sup>55</sup> Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton: Princeton University Press, 1993), 16–18.

<sup>56</sup> Local media and social media reported non-compliance in an area frequented by expats, leading to investigation and prosecution. Shaffiq Alkhatib, “7 charged with offences under Covid-19 regulations in Robertson Quay incident,” *The Straits Times*, 2 June 2020.



intimacy with kin and mate, whatever interconnectedness they have managed to retain or innovate against the upheavals of governing through contagion.

Living with and despite the Covid-19 pandemic, interconnectedness seems overwhelming, driving the strategies of governing through contagion. The greater interconnectedness breeds contagion, the greater disconnectedness governing through contagion harnesses and produces to battle contagion. More interconnectedness and disconnectedness ensue, magnified and created to survive contagion and the strategies to combat it. All over, inter/disconnectedness seems to follow governing through contagion along the pathway toward totalization.

Nonetheless, it is because inter/disconnectedness, not mere interconnectedness, follows governing through contagion that we can better recognize its might and wretchedness. Disconnectedness is both the chronic ailment pre-dating, as well as novel sickness begot from, governing through contagion. Disconnectedness is also its palliation, though not antidote. Although some subjects are compelled to obey strategies of control, perhaps more harshly than others, not all subjects capitulate to governing through contagion. Some fail to comply, because they lack the means and know-how. Others blithely ignore the measures. Still others wilfully resist.

We do not speak lightly of such resistance, enacted in the cracks and crevices of governing through contagion, nor do we celebrate it elatedly, as much as any power so potent needs to be impeached. The mortal threat of contagion is real. Herein lies the melancholia of living with governing through contagion, of trying to live by and against it: To tempt power of death, or give oneself to power over life? To let a tiny creature consume physical existence, or human and non-human things enthrall our souls? To obey and live in a transmuted reality, or to defy and die biological and social deaths?

## 5. After Contagion? On Staying with Disconnectedness

There is much more to do than meet the ultimatum that governing through contagion presents. Doing more begins with disconnectedness. It entails staying with disconnectedness long after contagion has dissipated, governing through contagion has held its triumph in the public square, and neighbours can once again hug one another.<sup>57</sup>

Contemplating what humans can do for this damaged earth, where they have robbed, murdered, and exterminated fellow humans and co-species, Donna

<sup>57</sup> The government commemorated defeating SARS with a museum exhibition, a concert, and an anthem on National Day.

Haraway proposes “staying with the trouble.”<sup>58</sup> Haraway entreats readers to shed human-centricity and arrogance, become keenly aware that they co-exist with multispecies who can alter their fates, and realize that humans are important—though not the only—players who can reshape all interconnected fates. She implores readers to make kin not only with fellow humans who are genealogically related but also with other humans and non-humans.<sup>59</sup> Staying with the trouble, humans redefine agency and responsibility, not by clearing away the past to imagine a utopian future, but by urgently finding ways to live and die well with all kin in the present.<sup>60</sup>

Staying with disconnectedness, let us remember why contagion once threatened human lives, how governing through contagion fostered new modes of domination, why so many nonetheless fell in line, and, consequently, why disconnectedness was laid naked for all to see. Despite the biological origins of contagion, both contagion and governing through contagion are human-made phenomena. After contagion, let us not forget that humans give critters, germs, technologies, and fellow humans agency to act on them and that humans allow themselves to act on all of them in return—with the manner by which we clear land, build shelter, make money, grow food, and treat kinfolk. Let us sear onto our memories the fissures, frailties, and limits of human knowledge and action that governing through contagion has unearthed. More fundamentally, staying with disconnectedness, let us bear in our hearts fellow humans who suffered under governing through contagion, especially those who suffered disconnectedness aggravatedly. Just as Oedipus’ attempt to lift the plague of Thebes ended in tragedy, governing through contagion’s pursuit of security may be its own curse. Even as a totalized mode of power, it cannot steer its destiny, vulnerable to unintended and unknown perils of human and non-human agencies.

In the suffering, injustice, and callousness of disconnectedness we find the motivation to resist and survive. This resistance is no mere recalcitrance in the cracks and crevices of governing through contagion. This resistance is about staying with disconnectedness. It battles contagion to survive its scourge, and so it performs complicitly with governing through contagion. At the same time, this resistance challenges governing through contagion by remembering its wretchedness in its mightiest moments of victory, remembering those whose lives are sacrificed to contagion as well as those who have had to invent new ways to live on in altered conditions. And so this resistance enables our survival of governing through contagion by remembering the subject before the political moralization of life and the normalization of morality. From resistance, survival and a

<sup>58</sup> Haraway, *Staying with the Trouble*, 56.

<sup>59</sup> Haraway, *Staying with the Trouble*, 2.

<sup>60</sup> Haraway, *Staying with the Trouble*, 9.

renewed sense of possibility emerge. Surviving governing through contagion is to carry all that history, memory, and ideals to live to fight—using law and all other technologies that availed themselves during governing through contagion, and using them with rage, with love, with care—to heal, if only partially,<sup>61</sup> the disconnectedness in the inter/dysconnected world that comes after contagion.

<sup>61</sup> Haraway, *Staying with the Trouble*, 56.

# Pandemics and Emergency Powers in Asia

Victor V. Ramraj\* and Arun K. Thiruvengadam\*\*

## 1. Introduction

Under the ancient Roman model of dictatorship, the Senate could direct the consuls to appoint a dictator for up to six months to deal with an emergency expeditiously, say, by leading military forces against a foreign invasion and swiftly restoring stability to the republic.<sup>1</sup> An elaborate system of institutional checks ensured that the dictator would step down as soon as the threat was rebuffed and the pre-crisis constitutional order would resume.<sup>2</sup> The ancient Roman model suggests that any legal framework for responding to an emergency has two components: dealing effectively with the threat and preventing abuse. How can these goals best be secured in a pandemic? Within the first few months of the Covid-19 pandemic, it became readily apparent that it posed two kinds of threat. First, it posed a mortal threat to individual and public health arising from a deadly virus that could be transmitted relatively easily through everyday social activities. Second, the efforts of governments to contain its spread inevitably led to a secondary danger as social and economic life was shuttered—the danger of social and political unrest. This chapter considers and assesses two dimensions of the governmental response: the formal legal structure under which that response operates and the dynamics of expertise, trust, and responsiveness to feedback that it potentially fosters—or inhibits. In our view, the goal of returning to normal is best served when these two dimensions—the legal framework and the expertise-feedback dynamic—are aligned to enable the society to respond effectively and fairly.

\* Chair in Asia-Pacific Legal Relations and Professor of Law, Centre for Asia-Pacific Initiatives and Faculty of Law, University of Victoria (<https://orcid.org/0000-0002-9663-9401>).

\*\* Professor of Law, School of Policy and Governance, Azim Premji University.

<sup>1</sup> J. Ferejohn and P. Pasquino, “The Law of Exception,” *International Journal of Constitutional Law* 2, no. 2 (2004): 211–212.

<sup>2</sup> Ferejohn and Pasquino, “Law of Exception.”

## 2. Formal and De Facto Emergency Powers

The legal responses to Covid-19 have diverged across different societies. What is somewhat surprising is that this variation has not always been along predictable lines. One would assume that democratic nations would adopt policies characterized by transparency and expertise, after seeking participation from the public, and that authoritarian societies would adopt centralized, top-down measures. The reality has been far more mixed. Responses to the pandemic follow four broad patterns: declaring a formal constitutional emergency; using generic, existing laws to address the emergency; drafting specialized laws and regulations to respond to Covid-19 challenge; and claiming implicit or residual executive powers.<sup>3</sup>

### A. Constitutional Emergency Powers

More than 90 per cent of constitutions in force today allow for the invocation of an emergency, where the normal pattern of constitutional governance can be suspended, and governments can exercise the option of ruling by decree in order to meet what could be an existential threat to the constitutional order. Constitutionalized emergency powers typically apply to wars with foreign powers, external aggression, or civil strife. Only about 26 per cent of constitutions allow the invocation of emergencies for a “national disaster.”<sup>4</sup> Invocation of constitutionalized emergency powers is usually accompanied by strict requirements for ensuring that they are validly invoked and typically need to be re-authorized by legislatures and supervised by other constitutional institutions at regular intervals. The constitutional logic is that while governments can be granted extraordinary powers to meet existential threats, this power should be exercised subject to safeguards to prevent abuse or permanent entrenchments of emergency rule.<sup>5</sup> The presence of these safeguards might explain why only a few governments have exercised this option. In Asia, only a few countries—East Timor, Indonesia, Japan, Mauritius, Philippines, and Thailand—opted to invoke a formal emergency in response to the pandemic.<sup>6</sup> In Japan, the current

<sup>3</sup> The first three patterns reflect Tom Ginsburg and Mila Versteeg’s taxonomy in “States of Emergencies, Part I,” *Harvard Law Review Blog*, 17 April 2020, <https://blog.harvardlawreview.org/states-of-emergencies-part-i/>.

<sup>4</sup> Ginsburg and Versteeg, “States of Emergencies.”

<sup>5</sup> Some modern constitutions draw on Article 4 of the International Covenant on Civil and Political Rights, which seeks to constrain governments by identifying non-derogable rights that cannot be limited even in an emergency. *See, for example*, Article 25(5) of Timor-Leste’s 2002 Constitution.

<sup>6</sup> The Geneva-based Centre for Civil and Political Rights (<http://ccprcentre.org/>) hosts a database tracking legal responses to the Covid-19 pandemic: <https://datastudio.google.com/reporting/>

constitution restricts the government's ability to enforce its emergency powers (to avoid repeating historical abuses of such power), rendering them relatively ineffective against the pandemic.<sup>7</sup>

## B. Ordinary Statutory Powers

A second option—using pre-existing general emergency and disasters laws to tackle Covid-19—has been widely deployed across Asia. Thailand's response blended the first and second patterns, invoking an existing Emergency Decree from 2005 and a domestic statute from 2015.<sup>8</sup> The appropriateness of these existing laws has, however, been questioned, not least because these existing laws were designed to tackle other threats and enable authoritarian measures seemingly unnecessary for tackling a pandemic.<sup>9</sup> In India, the Modi government invoked an 1897 law relating to epidemics and a 2005 law relating to national disasters to ground its initial responses.<sup>10</sup> The applicability of the latter has been questioned, given that a pandemic is not the kind of "natural disaster" envisaged by that law, which was originally enacted to tackle the problems exposed by the tsunami on 26 December 2004. It does not appear to apply to a pandemic affecting the entire country.<sup>11</sup> Various state governments and the central government also relied on colonial-era curfew laws to impose nationwide and state-specific lockdowns.<sup>12</sup> In some of these cases, governments might seek to adapt existing laws based on vague statutory language. For example, in India, the Ministry of Home Affairs issued regulations at the rate of 1.3 a day during the first three phases of the sixty-eight-day national lockdown.<sup>13</sup>

Not all uses of existing legislation are problematic, however, particularly when the legislative framework has been adapted to address contemporary public health emergencies. Other chapters in this volume, for instance, describe how,

1sHT8quopdfavCvSDk7t-zvqKIS0Ljiu0/page/dHMKB. Of jurisdictions in South, Southeast, and East Asia, the database indicates that (by the end of May 2020) a formal state of emergency had been declared in East Timor, Indonesia (Presidential Decree No. 11 of 2020), Japan, Mauritius, Philippines (Presidential Proclamation 929), Thailand (Emergency decree).

<sup>7</sup> Some have therefore called for stronger constitutionalized emergency powers: Ono and Matsui, Chapter 10, this volume. See also Akijo Ejima, "Japan's soft state of emergency: social pressure instead of legal penalty," *Verfassungblog*, 13 May 2020, <https://verfassungsblog.de/japans-soft-state-of-emergency-social-pressure-instead-of-legal-penalty/>.

<sup>8</sup> Leelapatana and Tangthavorn, Chapter 11, this volume.

<sup>9</sup> Leelapatana and Tangthavorn, Chapter 11, this volume.

<sup>10</sup> *The Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005*.

<sup>11</sup> Gautam Bhatia, "India's Executive Emergency," *Verfassungblog*, 13 April 2020, <https://verfassungsblog.de/an-executive-emergency-indias-response-to-covid-19/>.

<sup>12</sup> Tremblay and George, Chapter 12, this volume.

<sup>13</sup> See the full list of notifications issued by the government of India maintained by the PRS Legislative Research, available at <https://prsindia.org/covid-19/notifications?page=4&per-page=200>.

in the aftermath of Severe Acute Respiratory Syndrome (SARS) and Middle East Respiratory Syndrome (MERS), jurisdictions from South Korea to Vietnam adopted specialized public health and infectious diseases legislation to address many of the challenges that emerged during the pandemic.<sup>14</sup> Although these legislative initiatives could not have anticipated all of the challenges of a pandemic on the scale of Covid-19, they at least provided a legislative starting point from which to respond to the crisis.

### C. Specialized Statutory and Regulatory Measures

A third option involves enacting specific laws and regulations to respond to the challenges. Here, Taiwan and Singapore are instructive. Both jurisdictions had suffered considerably during the 2003 SARS epidemic, and their legal responses drew on those experiences. Taiwan had been monitoring events in Wuhan closely since December 2019. It initially relied on the *Communicable Diseases Act*, which had been amended in response to SARS and several times subsequently, most recently in June 2019. However, on 20 February 2020, the Parliament of Taiwan enacted the *COVID-19 Special Act* with retrospective effect from 15 January 2020, for a period of seventeen months. This special law has the character of a de facto emergency law, authorizing quarantines and contact tracing in ways that necessarily curtailed ordinary civil liberties (such as privacy rights) in the interest of containing the pandemic. The law seeks to be proportionate, does not exclude judicial review, and includes a sunset clause, consistent with liberal constitutional principles.<sup>15</sup>

Singapore's specially enacted law has both public health and economic components. Singapore's Constitution envisages the use of emergency powers in a pandemic, but this power was not invoked. Initially, Singapore used our second option—applying existing laws such as the *Infectious Diseases Act*, amended during the SARS epidemic—to respond to Covid-19. However, on 7 April 2020, the government enacted the *Covid-19 Temporary Measures Act, 2020* (CTMA), effective for one year (twice as long as an emergency proclamation under the constitution). This special law allows the government to regulate movement and social activities. However, Singapore was far less draconian in its regulation of Covid-19 than might have been expected, given its history of social control.<sup>16</sup>

<sup>14</sup> Chung and Lee, Chapter 16, this volume; Nguyen and Phan, Chapter 4, this volume.

<sup>15</sup> Chian-Liang Lee, "Taiwan's Proactive prevention of COVID-19 under Constitutionalism," *Verfassungsblog*, 22 April 2020, <https://verfassungsblog.de/taiwans-proactive-prevention-of-covid-19-under-constitutionalism/>. See also Chang and Lin, Chapter 3, this volume.

<sup>16</sup> Jothie Rajah, *Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore* (Cambridge: Cambridge University Press, 2012); on Singapore's "totalizing" Covid-19 response, see Chua and Lee, Chapter 8, this volume.

The CTMA also attempts to address the economic fallout of the pandemic—for example, by suspending legal action for Covid-19-related breach of contractual terms, softening the impact of laws relating to insolvency and other civil debt enforcement measures, and protecting tenants from the termination of leases for non-residential purpose due to non-payment of rent<sup>17</sup>—all in an effort to mitigate the medium- and long-term impact on the economy.

#### D. Implicit or Residual Executive Powers

A fourth method of responding to a crisis involves a claim of implicit or residual executive power. Those exercising power in this way might claim a legal basis. For example, in Cambodia, some of the legal measures for addressing the economic consequences of the pandemic bypassed Parliament altogether, coming instead “from the executive, through the prime minister, ministers, and senior governmental officials” who claimed the constitutional authority “to manage and command ‘all activities’ in every field of the government.”<sup>18</sup> Cambodia’s new *State of Emergency Law* raises additional concerns to the extent that it “gives the government immense power during a state of emergency,” allowing it to “ban or restrict movement, assembly, and work . . . impose a lockdown and self-isolation; evacuate, seize, or manage private property with compensation; set prices of goods and services; close public and private places; monitor all telecommunications; and ban or restrict the sharing of news which might cause public fear, chaos, and confusion and which would affect state security.”<sup>19</sup> Meanwhile, amid the pandemic, in late May 2020, the Philippines was poised to enact a new anti-terrorism act, that would “eliminate critical legal protections and permit government overreach against groups and individuals labeled terrorists.”<sup>20</sup> Executive assertions of emergency power are often implicitly predicated on the Schmittian claim that “sovereign is he who decides on the exception”<sup>21</sup>—a claim that, in contrast to the first category, places emergency power outside law’s capacity to constrain it. Some of the regulations issued by many governments—especially by central and state governments in India—fit this category better, although they are ostensibly issued under pre-existing statutes under our second category.

<sup>17</sup> De Visser and Straughan, Chapter 15, this volume; Tan and Wang, Chapter 25, this volume.

<sup>18</sup> Ly, Hing, and Soy, Chapter 20, this volume.

<sup>19</sup> Ly, Hing, and Soy, Chapter 20, this volume.

<sup>20</sup> “Philippines: New Anti-Terrorism Act Endangers Rights,” Human Rights Watch, 5 June 2020.

<sup>21</sup> Carl Schmitt, *Political Theology: Four Chapters on the Theory of Sovereignty* (Cambridge, MA: MIT Press, 1988), 5.



### 3. Legal Frameworks and Abuses of Power

Legal frameworks and the institutions that implement them are important in an emergency. The failure to take them seriously gives rise to two possible dangers. First, inappropriate legal structures can lead to an excessive concentration of power, particularly in the executive. Second, even when power is not concentrated, ordinary legislation might provide excessive discretion in its application to a pandemic or provide overly broad powers that can be misdirected or otherwise abused.

#### A. Consolidating Executive Power

Constitutionalists worry about abuses of power because at one level, constitutionalism is about limiting power in *all* contexts, including in times of emergency. Although a health emergency is qualitatively different from a political emergency, the invocation of emergency powers consolidates power in the government—typically the executive—opening the door to opportunism and abuse. Constitutional theory envisages that governments will use minimally intrusive measures proportionate to the threat, and extraordinary measures are limited to the threat and not used to settle old or unrelated scores.<sup>22</sup> Japan’s emergency regime has proved relatively innocuous, but some constitutional emergency powers concentrate power in the executive in ways that can be difficult to reverse. Malaysia’s Emergency Ordinance, invoked in 1969 in response to communal riots,<sup>23</sup> remained in place for almost forty-three years, until its demise in 2012, long after the underlying threat had dissipated.<sup>24</sup> In the Covid-19 era, other emergency regimes, including Cambodia’s new emergency regime and the Philippines’ anti-terrorism law, have raised concerns about entrenchment and potential abuse.

Consolidation of executive power can also occur in the absence of a formal emergency declaration, with the pandemic providing a pretext for expanding executive control. In Sri Lanka, our co-contributors describe how an “executive takeover of the state using the pandemic response as an opportunity boosted an ongoing project of executive aggrandizement.”<sup>25</sup> The Gotabaya regime appears

<sup>22</sup> Tom Ginsburg and Mila Versteeg, “States of Emergencies, Part II,” *Harvard Law Review Blog*, 20 April 2020, <https://blog.harvardlawreview.org/states-of-emergencies-part-ii/>.

<sup>23</sup> H.P. Lee, “Constitutionalised emergency powers: a plague on Asian constitutionalism?,” in Victor V. Ramraj and Arun K. Thiruvengadam eds., *Emergency Powers in Asia* (Cambridge: Cambridge University Press, 2010), 393–411, 396–399.

<sup>24</sup> The government repealed its *Internal Security Act* in 2011 and allowed the 1969 Emergency Ordinance to lapse in June 2012, even as it introduced other extraordinary offences and powers under the *Security Offences (Special Measures) 2012 Act*.

<sup>25</sup> Fonseka, Ganeshathasan, and Welikala, Chapter 24, para. 30 (p. 362). this volume.

to have used multiple means to entrench its own presence within the Sri Lankan political landscape as elections approached. A similar trend seems to have been observed in Malaysia, where the pandemic arrived in the middle of a constitutional crisis; the newly installed prime minister effectively used the need to tackle the pandemic to consolidate the tenuous hold of his hastily assembled government.<sup>26</sup> In Hong Kong, the already-embattled Carrie Lam-led government was able to use the reprieve provided by the pandemic to forestall the protests that had wracked the streets and public roads and train stations of Hong Kong since mid-2019. Once the protesters had retreated, the government went on to arrest key figures—many of whom were senior citizens—in the midst of the pandemic.<sup>27</sup> Even as Hong Kong nurses back to some semblance of normalcy, Beijing and the Hong Kong government have exploited the relative quiet to push through a controversial national security law that further undermines the “one country, two systems” principle.<sup>28</sup>

The usual ways of checking abuses by government involve turning to parliaments and courts. Neither avenue has proved to be particularly effective in the early days of Covid-19. In many contexts, the legislature is not sufficiently independent of powerful executive governments to provide an independent check on power, particularly in an atmosphere of public fear and, in some instances, with legislatures themselves subject to lockdowns and physical distancing measures, making deliberation even more difficult. Ferejohn and Pasquino point out that when ordinary legislation is used in response to any emergency, the courts can still exercise powers of judicial review, providing some hope that abuses of authority will be lessened.<sup>29</sup> However, the courts have also been hampered in their ability to check accretions of executive power. In India, the Modi government has not shied away from targeting Muslims in particular, bringing charges against students involved in protests against a controversial citizenship law illegally targeting Muslims, at a time when India’s courts were on reduced functioning and unable to act in their usual capacity. Moreover, the overarching shadow of a “de facto emergency” can act as a powerful psychological restraint such that even powerful courts (such as the Indian Supreme Court) hesitate to question executive decisions. Further afield, in Malawi and South Africa, the courts have been able to strike down aspects of Covid-19 lockdowns as arbitrary

<sup>26</sup> For background, see Tayeb and Por, Chapter 22, this volume.

<sup>27</sup> “Police in Hong Kong arrest 15 activists amid autonomy warnings,” *The Guardian*, 18 April 2020, <https://www.theguardian.com/world/2020/apr/18/police-in-hong-kong-arrest-14-activists-amid-autonomy-warnings>.

<sup>28</sup> Cora Chan, “Demise of ‘One Country, Two Systems’? Reflections on the Hong Kong Rendition Saga,” *Hong Kong Law Journal* (2019), 447.

<sup>29</sup> “The Law of Exception: A Typology of Emergency Powers,” *International Journal of Constitutional Law* 2 (2004), 201–239.

and illegal,<sup>30</sup> but in the early days of Covid-19, these decisions were yet to be emulated in Asia. In contrast, the Civil Court in Thailand determined that the “fit-to-fly” requirement under the 2005 Emergency Decree, that was intended to address the pandemic by requiring inbound air travellers to obtain a Covid-19 test before flying, did not amount to a tort (a civil wrong); meanwhile, the ability of the Constitutional Court to review the validity of those measures remained in doubt.<sup>31</sup>

## B. Discretion and Overreach

A second set of concerns relates to the use of ordinary legislation to address the pandemic, which might provide excessive discretion or overly broad powers to the government. These risks might be heightened when statutes are redeployed for purposes (e.g., containing the Covid-19 pandemic) they were never intended to serve and for which they are ill-suited. In Thailand too, this pattern appears to have been followed: existing emergency laws that catered to dealing with terrorists and public enemies were marshalled to tackle the pandemic.<sup>32</sup> The deployment of hardline security forces to tackle the pandemic seems both overbroad and of limited effectiveness.<sup>33</sup> The implementation of lockdowns in Thailand also seems to have affected marginalized sections and poor people disproportionately, often at the cost of their being able to obtain access to food supplies. Likewise, in India the central and state governments used the 1897 *Epidemics Act* and the 2005 *National Disaster Management Act*, as well as curfew orders under the colonial *Code of Criminal Procedure*, to regulate the initial stages of the pandemic. On the evening of 24 March, Prime Minister Modi announced a nationwide lockdown effective at midnight, i.e., on March 25.<sup>34</sup> There was little consultation on this decision with expert bodies, and the legal basis was questionable.<sup>35</sup> This drastic action resulted in one of the largest migrations in recent global history as millions of migrant workers, who were stranded in cities away from their hometowns and villages, began to despair after the lockdown was extended across weeks and months, and began to walk or find any means

<sup>30</sup> “Malawi High Court blocks coronavirus lockdown,” *Al Jazeera*, 18 April 2020, <https://www.aljazeera.com/news/2020/04/malawi-high-court-blocks-coronavirus-lockdown-200417184430403.html>; and “South Africa High Court strikes down coronavirus lockdown as unconstitutional,” *Live Law India*, 5 June 2020, <https://www.livelaw.in/foreign-international/south-africa-hc-lockdown-regulations-unconstitutional-157866>.

<sup>31</sup> Leelapatana and Tangthavorn, Chapter 11, this volume.

<sup>32</sup> Leelapatana and Tangthavorn, Chapter 11, this volume.

<sup>33</sup> Leelapatana and Tangthavorn, Chapter 11, this volume.

<sup>34</sup> Tremblay and George, Chapter 12, p. 173, this volume.

<sup>35</sup> Tremblay and George, Chapter 12, this volume.

of transportation to return to their homes, thousands of kilometres away.<sup>36</sup> This large-scale migration of people, often on foot, happened at the peak of the summer in India, when temperatures can go up to 47°C, adding to the inhuman nature of the suffering imposed. By the end of May 2020, millions of workers and marginalized people were estimated to have been affected by this decision, which amounted to an abuse of the law because of the neglect of principles we consider part of the rule of the law—consultation with experts and relevant government agencies including state and local governments and coordination between state and non-state actors to mitigate the effect of harsh actions.

In contrast, we have seen how Taiwan and Singapore used or refined special laws to address the specific challenges of the pandemic—whether to implement specific public health measures based on the latest available evidence to contain the threat or to address the social and economic fallout of the pandemic. In some cases, the measures were stringent, bordering on draconian, but because they were time-limited and motivated by some notions of proportionality, they were better suited to managing the pandemic. Other chapters in the volume show how other jurisdictions in Asia—we already mentioned South Korea and Vietnam, but others too—anticipated public health emergencies, enacting and then supplementing public health or specific infectious diseases laws to address epidemics. In some cases, the specific public health measures for managing an outbreak drew on earlier interventions by the World Health Organization,<sup>37</sup> reflecting many of the best practices set out in the introduction to this volume.<sup>38</sup> Other measures, such as economic interventions, had to be specifically designed to address the pandemic’s extraordinary consequences. Even central banks had to rethink how their response to the 2007–2009 Global Financial Crisis could be adapted for a pandemic on the scale of Covid-19.<sup>39</sup>

#### 4. Evidence, Trust, and Feedback

Legal frameworks are important in an emergency, but they do not operate in a vacuum, and the resilience of a particular jurisdiction depends not only on the law it invokes to deal with a crisis such as a pandemic but also the way in which that legal framework interacts with dynamics of expertise, public trust in institutions, and responsiveness to feedback that the law potentially fosters or undermines. In particular, many of the governments surveyed in this chapter that

<sup>36</sup> Tremblay and George, Chapter 12, this volume.

<sup>37</sup> Breau and Preethi, Chapter 13, this volume.

<sup>38</sup> Ramraj and Little, Chapter 1, this volume.

<sup>39</sup> Hofmann, Chapter 7, this volume.

successfully contained the first wave of the virus were those that implemented evidence-based, multidimensional responses (based on their experiences with previous epidemics, such as SARS or MERS), commanded high levels of public trust, and were responsive to critical feedback and open to course-correction.

The place of expertise in policy-making is contentious at the best of times—no less so in an emergency. In the United States in particular, expertise has come under attack across the political spectrum, with some seeking to unmask its connection to elitism and power<sup>40</sup> and others attributing the erosion of the authority of experts to universities, the internet, and the proliferation of mass media.<sup>41</sup> But even with this decline in the United States, the evidence in this volume suggests that a different approach to science and expertise is visible in the response to Covid-19, particularly by the technocratic governments of, among others, Taiwan, Vietnam, Singapore, and South Korea.<sup>42</sup> Notably, these governments fall broadly across a political spectrum, with significant variations in their legal and political configurations, yet all have met with (qualified) success in the early stages of the pandemic.

Expertise does not, however, suggest infallibility, which brings us to a critical, institutionally embedded difference between claims of expertise by public health experts during a pandemic and claims of expertise on the part of the security intelligence establishment post-9/11. In the post-9/11 context, emergency measures allowed security intelligence officials, testifying to security-cleared judges behind closed doors, based on information from undisclosed informants, to support government requests to detain terrorist suspects, often indefinitely, with limited prospects for public scrutiny or awareness of their cases.<sup>43</sup> In Singapore, following the detention of several terrorism suspects under its *Internal Security Act*, the government tried to address transparency concerns by publishing a white paper outlining its cases against the detainees,<sup>44</sup> but this document was, by its nature, one-sided. While some or even many of the detentions immediately post-9/11 might have been justified by the evidence in the hand of the security establishment, the number of unjustified detentions around the world—such as that of Maher Arar in Canada<sup>45</sup>—will probably never be known. In contrast,

<sup>40</sup> David Kennedy, “Law, Expertise, and the Global Political Economy,” *Tilburg Law Review* 23, no. 1 (2018): 109–120.

<sup>41</sup> Tom Nichols, *The Death of Expertise: The Campaign Against Established Knowledge and Why It Matters* (New York: Oxford University Press, 2017).

<sup>42</sup> See, in this volume, Chapters 2, 4, 15, and 16, respectively, and on technology and privacy, Chapter 14.

<sup>43</sup> Kent Roach, “The Criminal Law and its Less Restrained Alternatives” in Victor V. Ramraj, Michael Hor, Kent Roach, eds., *Global Anti-Terrorism Law and Policy*, 2nd ed., (Cambridge: Cambridge University Press, 2012), 91–121.

<sup>44</sup> White Paper on Jemaah Islamiyah Arrests (Cmd 2 of 2003) [Singapore].

<sup>45</sup> See, for details, *Commission of Inquiry into the Activities of Canadian Officials in Relation to Maher Arar, Analysis and Recommendations* (Ottawa: Public Works, 2008).

claims of expertise on the part of public health experts during the Covid-19 pandemic are often made openly, in public, and are subject both to lay and expert scrutiny and a weighing of the case for those measures against other countervailing values or priorities. The failure on the part of some governments to make an evidentiary case for emergency public health measures, then, is not a failure of expertise—but rather a failure of communication at best or of deliberate suppression of information at worst.<sup>46</sup>

Which brings us to the matter of trust. In their chapter on Japan's response to the pandemic, Tomoya Ono and Shigenori Matsui describe how Japan's emergency powers measures, which the government invoked in response to the pandemic, are effectively toothless—the government can do no more than recommend physical distancing or mask-wearing. It has no power to enforce those measures coercively, by fine or imprisonment.<sup>47</sup> The socio-legal literature on the role of formal law in Japan is rich, complex, and contested,<sup>48</sup> but in the context of Covid-19, it raises important questions about how to secure compliance with public health norms and the extent to which public trust in public institutions plays an explanatory role. Questions of legal culture are important also in Bhutan, for example, which did not declare a formal emergency, but where the king, as constitutional monarch, played an active role in galvanizing public support for containment measures, effectively displacing partisan politics.<sup>49</sup> Wen-Chen Chang and Chun-Yuan Lin attribute Taiwan's successful early response to a “democratic government that is willing to engage in a transparent and responsive process for developing and implementing regulatory measures.”<sup>50</sup> Public support for restrictive but evidence-based public health measures can also be found in South Korea, where voters went to the polls and resoundingly re-elected the incumbent government in April 2020, as its containment measures were yielding positive results.<sup>51</sup>

Complete deference to expertise, however, can lead to blind spots, particularly in relation to competing considerations and heat-of-the-moment trade-offs.<sup>52</sup> It might even generate some of the far-reaching, “totalizing” tendencies highlighted in the previous chapter.<sup>53</sup> Similarly, Singapore's technocratic, whole-of-government approach, hailed as a model in the early

<sup>46</sup> Wu, Chapter 5, this volume.

<sup>47</sup> Ono and Matsui, Chapter 10, this volume.

<sup>48</sup> See Luke Nottage, Hitoshi Nasu, and Simon Butt, “Disaster Management: Socio-Legal and Asia-Pacific Perspectives” in Simon Butt, Hitoshi Nasu and Luke Nottage, eds., *Asia-Pacific Disaster Management: Socio-Legal and Comparative Perspectives* (Heidelberg: Springer, 2014), 1–58, 16–19.

<sup>49</sup> Tshering and Dorji, Chapter 19, this volume.

<sup>50</sup> Chang and Lin, Chapter 3, this volume.

<sup>51</sup> Chung and Lee, Chapter 16, this volume.

<sup>52</sup> For example, in relation to potentially intrusive surveillance technologies: see Li, Phusamruat, Clear, and Damian, Chapter 14, this volume.

<sup>53</sup> Chua and Lee, Chapter 8, this volume.

days of the pandemic, somehow managed to overlook the cramped living conditions of workers, leading to a massive second wave of infections.<sup>54</sup> Hong Kong's government resisted closing its borders to China until after many of its medical professionals went on strike to demand swift action.<sup>55</sup> In Taiwan, the government responded to concerns on the part of human rights groups regarding the privacy of personal data under its *Communicable Disease Control Act* by adding a requirement to delete the data at the end of the pandemic.<sup>56</sup>

Moreover, even public health measures informed by the best available scientific evidence need also to account for the social and economic consequences—including possible social unrest—to effectively stay the course. Many of the more affluent societies in the region, such as Singapore and Hong Kong, provided benefits, direct or indirect, to affected workers and business owners.<sup>57</sup> So too did societies with fewer resources but strong social welfare traditions, such as Vietnam and the Indian state of Kerala.<sup>58</sup> Even as they implemented stringent public health measures including quarantines, testing, and contact tracing, they also provided benefits to vulnerable groups, ensuring adequate supplies of food and medical supplies.<sup>59</sup> In the case of Kerala, the government “emphasised sympathy and compassion for people affected by the pandemic . . . [mobilizing] some 16,000 teams to man call centres and to look after as many as 100,000 quarantined people, ensuring they do not lack food, medical care or simply someone to talk to.”<sup>60</sup> Along with the specialized legislation discussed in section 2, an evidence-based, holistic, and responsive approach to containing the pandemic seems to provide a balanced and effective way through a public health emergency.

<sup>54</sup> See De Visser and Straughan, Chapter 15, this volume; and Chua and Lee, Chapter 8, this volume.

<sup>55</sup> Hong Kong's policy changes following the strike action by healthcare professionals in February 2020 are detailed in Ho and Cheung, Chapter 17, this volume; and Wu, Chapter 5, this volume. See also “Democracies Contain Epidemics Most Effectively,” *The Economist*, 6 June 2020, <https://www.economist.com/graphic-detail/2020/06/06/democracies-contain-epidemics-most-effectively>.

<sup>56</sup> Chang and Lin, Chapter 3, this volume.

<sup>57</sup> Tan and Wang, Chapter 25, this volume.

<sup>58</sup> “Vietnam and the Indian State of Kerala Curbed Covid-19 on the Cheap,” *The Economist*, 9 May 2020, <https://www.economist.com/asia/2020/05/09/vietnam-and-the-indian-state-of-kerala-curbed-covid-19-on-the-cheap>.

<sup>59</sup> See, respectively, Nguyen and Phan, Chapter 4, this volume; and Tremblay and George, Chapter 12, this volume. The economic consequences will be more severe in the poorest countries in the region, suggesting an even more pressing need to reconcile public health measures with protection of individual livelihoods: Li-Li Chen, “Rethinking Timor-Leste's COVID-19 State of Emergency,” *The Diplomat*, 27 April 2020, <https://thediplomat.com/2020/04/rethinking-timor-lestes-covid-19-state-of-emergency/>.

<sup>60</sup> “Vietnam and the Indian State of Kerala.”

## 5. Returning to Normal?

The ancient Roman dictatorship offered an ideal model for dealing expeditiously with an emergency, restoring normalcy in a timely fashion, with institutional checks to prevent abuse of power. Its appeal remains powerful today, even as public health experts take the place of Roman dictators. As with political emergencies, public health emergencies run the risk of what David Dyzenhaus called the “permanence of the temporary.”<sup>61</sup> Emergency measures can be difficult to roll back; economic and social repercussions may linger. With Covid-19, the economic fallout is projected to reverberate for years, well after subsequent waves of the pandemic have passed.<sup>62</sup> And the social repercussions are even more difficult to anticipate. Xenophobia, once unleashed, is difficult to contain. After 9/11, anti-Muslim sentiments lingered in the United States; in the Covid-19 context, already tenuous ethno-religious cleavages have been cracked open from India to Malaysia to Bangladesh, with religious minorities,<sup>63</sup> refugees,<sup>64</sup> and migrant workers<sup>65</sup> particularly at risk. Addressing the plight of these and other vulnerable groups is not only the right thing to do, considering their “reduced ability to cope with containment measures,”<sup>66</sup> it is also—for the more pragmatic and self-interested decision-makers—an effective strategy to prevent social unrest. Yet some governments have used the public health crisis as a pretext for tightening their grip on political opponents, heightening the risk of politicizing the pandemic.

Our survey of emergency powers under Covid-19 does not offer easy solutions for returning to normal. But for governments seeking to do so, three considerations stand out. First, law does not fully determine outcomes, but in the context of a pandemic, specialized laws directed at infectious diseases seemed more effective in containing the spread of a virus than general emergency powers or statutes crafted for a different purpose. Second, the effectiveness of legal measures should be assessed not in forensic isolation, but rather in terms of the ability of institutions to translate scientific evidence into practice. In this respect, jurisdictions that learned from SARS and MERS, aligning their laws with expert advice and practical experience, offer useful models for responding to a

<sup>61</sup> “The Permanence of the Temporary: Can Emergency Powers be Normalized?” in Ronald J. Daniels et al. eds., *The Security of Freedom* (Toronto: University of Toronto Press, 2001).

<sup>62</sup> See Ciuriak and Calvert, Chapter 27, this volume.

<sup>63</sup> Tremblay and George, Chapter 12, this volume.

<sup>64</sup> “The coronavirus reaches the Rohingya refugee camps,” *The Economist*, 17 May 2020, <https://www.economist.com/asia/2020/05/17/the-coronavirus-reaches-the-rohingya-refugee-camps>.

<sup>65</sup> See De Visser and Straughan, Chapter 15, this volume; Ostwald and Tun, Chapter 23, this volume; and Lansdowne and Lawson, Chapter 30, this volume.

<sup>66</sup> See, for example, “LAWASIA Statement of Concern on Emergency Measures Adopted During Covid-19,” 27 April 2020, <https://www.lawasia.asn.au/resources-publications/advocacy-documents>.



public health crisis.<sup>67</sup> Third, governments that are responsive to public feedback and attentive to policy failures and social consequences are more successful in fighting the pandemic; by correcting course and attending to social needs, they strengthen public trust and secure greater compliance. Responsive governments are likely to be more attentive not only to the public health aspects of a pandemic but also to its social and economic consequences—taking steps to help individuals, families, communities, and businesses weather the economic storm.

Covid-19 offers important lessons on how to respond to emergencies, but it also reminds us that it is equally critical to prepare for them. In this respect, expertise is critical, even if fallible. It allows us to plan ahead, formulating appropriate laws, designing effective institutions, and creating emergency protocols, so we can respond quickly when disaster strikes. Mitigating the disaster reduces the chances it will spiral out of control—leading to ever more draconian measures. A sobering thought as we emerge from one global emergency and contemplate the next one.<sup>68</sup>

<sup>67</sup> Chung and Lee, Chapter 16, this volume.

<sup>68</sup> Ghaleigh and Burrows, Chapter 29, this volume.

# Japan: Keeping the Death Toll to the Minimum

Tomoya Ono\* and Shigenori Matsui\*\*

## 1. Introduction: Outbreak and Spread of Covid-19 in Japan

On 15 January 2020, the Japanese Ministry of Health, Labour and Welfare (MHLW) confirmed the first case of the 2019 novel coronavirus.<sup>1</sup> The first patient was a Japanese resident who had recently visited the city of Wuhan. Several subsequent patients were all Wuhan residents who were visiting Japan or tourists who had visited Wuhan. Gradually, however, Japanese people who had close contacts with these patients came to be infected, and the number of confirmed patients skyrocketed, making it increasingly difficult to trace back where and when they got infected. As of 15 May 2020, 16,178 people were domestically infected, of which 710 had died (excluding the patients on a cruise ship).<sup>2</sup> The Japanese government also decided to evacuate and repatriate Japanese citizens and their families by air from Wuhan. These evacuees were requested to be tested and asked to remain in designated hotel rooms for fourteen days. Fifteen were found to be infected.<sup>3</sup>

The government was also notified that one of the passengers aboard the *Diamond Princess*, a luxury cruise ship that had returned to the Yokohama port after a two-week round-trip voyage, had earlier disembarked in Hong Kong and was infected with the new coronavirus. The government tested all passengers who had come in close contact with the infected passenger before allowing them to disembark. Ten other passengers were initially found to have been infected.

\* Associate Professor of Constitutional Law, Faculty of Law, Economics, and Humanities, Kagoshima University.

\*\* Professor, Allard School of Law, University of British Columbia.

<sup>1</sup> Kouseiroudoushō [Ministry of Health, Labour, and Welfare] (MHLW), *Shingata coronavirus nikanrenshita haien no kanja no hassei nitsuite* [The First Confirmed Patient Infested with New Coronavirus] (16 January 2020), [https://www.mhlw.go.jp/stf/newpage\\_08906.html](https://www.mhlw.go.jp/stf/newpage_08906.html); “Japan confirms the first case of new China coronavirus strain,” *Guardian*, 16 January 2020, <https://www.theguardian.com/world/2020/jan/16/japan-confirms-first-case-of-new-china-coronavirus-strain>.

<sup>2</sup> MHLW, *Shingata coronavirus kansenshō no genzai no jōkyō to kouseiroushō no taiou nitsuite* (15 May 2020), [https://www.mhlw.go.jp/stf/newpage\\_11339.html](https://www.mhlw.go.jp/stf/newpage_11339.html).

<sup>3</sup> MHLW, *Shingata coronavirus kansenshō no genzai no jōkyō to kouseiroushō no taiou nitsuite*.

The infected passengers were taken to the hospitals, but the government ordered a fourteen-day quarantine on the ship for all remaining passengers and crew members. Of the 3,711 passengers and crew members on board, the final number of infected patients reached 712 (including 13 deaths).<sup>4</sup>

People of all ages are susceptible to infection.<sup>5</sup> However, most of the people who have died from coronavirus are in their seventies and eighties; fewer are in their sixties or younger. This indicates that the risk of death for the elderly is high. And at a press conference on 9 April, Chief Cabinet Secretary Yoshihide Suga said that over 70 per cent of the deaths were male,<sup>6</sup> consistent with the situation in the United States.<sup>7</sup>

This chapter examines the Japanese government's responses to Covid-19. Section 2 describes the general legal and regulatory framework and the government's responses. Section 3 describes the two most important tasks of the government response: obtaining public compliance without force and preventing the medical care system from collapsing. Section 4 is a critical examination, pointing out the uniqueness of the Japanese approach, its limitations and future challenges. We conclude that Japan's unique approach to Covid-19 might work to prevent pandemic outbreaks and medical care system collapse, but important issues remain. These issues will lead us to reconsider the Japanese legal system in times of emergency.

## 2. Legal and Regulatory Responses to Covid-19

### A. Immigration Control and Quarantine

In response to the outbreak of the new coronavirus in Wuhan city, Hubei province, China, the Japanese government first took countermeasures to prevent the spread of the virus to Japan. Under the *Quarantine Act*,<sup>8</sup> everyone who seeks to enter Japan may be subject to quarantine; under the *Immigration Control and Refugee Act*,<sup>9</sup> immigration officers can refuse entry to visitors who carry an infectious disease.

<sup>4</sup> MHLW, *Shingata coronavirus kansenshō no genzai no jōkyō to kouseiroushō no taiou nitsuite*.

<sup>5</sup> MHLW, *Shingata coronavirus kansenshō no kokunai hassei dōkō* [Tendency of Domestic New Coronavirus Patients] (13 April 2020), <https://www.mhlw.go.jp/content/10906000/000621405.pdf>.

<sup>6</sup> “Kokunai sisha no 7warikyo ga danse, kansen wa 6wari, Suga shi ‘Seibetsu no eikyo humei,’” *Mainich Shinbun*, 9 April 2020, <https://mainichi.jp/articles/20200409/k00/00m/040/107000c>.

<sup>7</sup> “In N.Y.C., the Coronavirus Is Killing Men at Twice the Rate of Women,” *New York Times*, 7 April 2020, <https://www.nytimes.com/2020/04/07/health/coronavirus-new-york-men.html>.

<sup>8</sup> *Ken-ekihō* [Quarantine Act].

<sup>9</sup> *Shutsu-nyukoku kanri oyobi nanmin ninteihō* [Immigration Control and Refugee Act].

On 28 January 2020, the Japanese government issued a new Cabinet Order, classifying the new coronavirus as a “designated infectious disease” under the *Infectious Disease Prevention Act*<sup>10</sup> and amended the Quarantine Act Enforcement Order to add it as an infectious disease subject to quarantine.<sup>11</sup> As a result, the government could subject all visitors to Japan to quarantine and refuse entry to all confirmed patients of the new coronavirus. The Japanese government decided to deny entry to foreigners who had visited Hubei province during the previous fourteen days or had a passport issued in the province. To justify this denial, the government had to rely upon another clause which allows it to refuse entry because of possible harm to public interest. But unlike some other countries such as the United States or Australia, Japan did not restrict the entry of other Chinese visitors.

## B. Preparation for the Domestic Spread

The government also prepared for the spread of the coronavirus inside Japan. The MHLW thus revised its regulations to apply various provisions of the *Infectious Disease Prevention Act* to the new coronavirus infection as a “designated infectious disease.”<sup>12</sup> As a result, almost all countermeasures were made applicable to Covid-19, including medical testing and mandatory hospitalization of confirmed patients.

The government established the New Coronavirus Infection Response Headquarters (the “Headquarters”) in accordance to the *Infectious Disease Prevention Act* on 30 January 2020, headed by the prime minister and consisting of all state ministers, holding its first meeting that day.<sup>13</sup> On 13 February, the Headquarters published the first “Emergency Response for New Coronavirus Infection” in which it announced that the government would take various measures such as strengthening inspection and treatment systems and ensuring

<sup>10</sup> *Shingata coronavirus kansenshō wo shitei kansenshō toshite sadamerutō no seirei* [Cabinet Order to Designated New Coronavirus Infection as Designated Infectious Disease], cabinet order no. 11 of 2020, <https://www.mhlw.go.jp/content/10900000/000589748.pdf>.

<sup>11</sup> *Ken-ekihō sekourei no ichibu wo kaiseisuru seirei* [Cabinet Order to Amend Parts of the Quarantine Act Enforcement Order], cabinet order no. 12 of 2020.

<sup>12</sup> MHLW, Kenkō kyokuchō [Health division chief], *Shingata coronavirus kansenshō wo shitei kansenshō toshite sadamerutō no seireitō no sekou nitsuite* [Enforcement of the Cabinet Order to Designated New Coronavirus Infection as Designated Infectious Disease] (28 January 2020), <https://www.mhlw.go.jp/content/10900000/000589747.pdf>.

<sup>13</sup> Kantei [Prime Minister and His Cabinet], *Shingata coronavirus kansenshō taisaku honbu* [New Coronavirus Infection Response Headquarters] (30 January 2020), [https://www.kantei.go.jp/jp/singi/novel\\_coronavirus/th\\_siryou/sidai\\_r020130.pdf](https://www.kantei.go.jp/jp/singi/novel_coronavirus/th_siryou/sidai_r020130.pdf).

stable supply of masks and pharmaceuticals.<sup>14</sup> The Headquarters subsequently announced in late February and early March<sup>15</sup> that the government would bring masks and distribute them to the public, increasing the PCR (polymerase chain reaction) testing to confirm new infections.

### C. Response to the Pandemic

Faced with the gradual spread of the coronavirus in Japan, the government intensified its countermeasures, advising Chinese, South Korean, and certain other foreign visitors to self-quarantine for fourteen days after entry and refrain from using the public transportation system. On 27 February, the prime minister requested schools to close temporarily; they started to close nationwide from 2 March.<sup>16</sup> On 13 March, the Diet amended the *New Influenza Special Measure Act*,<sup>17</sup> a special law enacted to counteract the new influenza outbreak, making it applicable to Covid-19. This amendment allowed the government to use all countermeasures against new influenza viruses, including the declaration of a state of emergency. On that day, the Chief Cabinet Secretary indicated the government was not considering a declaration of a state of emergency “at this point,”<sup>18</sup> but the government used its new powers to establish the Headquarters on 26 March, in preparation of a formal declaration.<sup>19</sup>

After insisting that the Olympic Games scheduled to be hosted by Tokyo in the summer of 2020 would go ahead as planned,<sup>20</sup> the government announced on 24

<sup>14</sup> Headquarters, *Shingata coronavirus kansenshō taisaku ni kansuru kinkyu taiō-saku* [Emergency Response for New Coronavirus Infection] (13 February 2020), [https://www.kantei.go.jp/jp/singi/novel\\_coronavirus/th\\_siryoutaiou\\_corona.pdf](https://www.kantei.go.jp/jp/singi/novel_coronavirus/th_siryoutaiou_corona.pdf).

<sup>15</sup> Headquarters, *Shingata coronavirus kansenshō taisaku no kihon houshin* [Basic Guideline for Countermeasures against New Coronavirus Infection] (25 February 2020), <https://www.mhlw.go.jp/content/10900000/000599698.pdf>; Headquarters, *Shingata coronavirus kansenshō taisaku ni kansuru kinkyu taiō-saku (dai2dan)* [Emergency Response to New Coronavirus Infection: 2nd Measures] (10 March 2020).

<sup>16</sup> “Abe’s bold school closure move appears spurred by criticism of virus response,” *Japan Times*, 28 February 2020, <https://www.japantimes.co.jp/news/2020/02/28/national/abe-closes-school-coronavirus/#.Xr8zTC9U2N8>; “Nearly all prefectures in Japan shut schools amid coronavirus outbreak,” *Japan Times*, 2 March 2020, <https://www.japantimes.co.jp/news/2020/03/02/national/japan-prefectures-shut-schools-covid-19/#.Xr8zyC9U2N8>. The schools were able to open again gradually, depending upon the local conditions, after 24 March.

<sup>17</sup> *Shingata influenzatō taisaku tokubetsu sochihō* [New Influenza Special Measures Act].

<sup>18</sup> Satoshi Sugiyama, “Japan’s Diet unites, on surface at least, to pass coronavirus emergency bill,” *Japan Times*, 13 March 2020, <https://www.japantimes.co.jp/news/2020/03/13/national/politics-diplomacy/japans-diet-unites-surface-least-pass-coronavirus-emergency-bill/>.

<sup>19</sup> Prime Minister and His Cabinet, *Shingata coronavirus kansenshō taisaku honbu no secchi ni tsuite* [Establishment of New Coronavirus Infection Countermeasures Headquarters], [https://www.kantei.go.jp/jp/singi/novel\\_coronavirus/th\\_siryoutaiou\\_honbu\\_konkyo.pdf](https://www.kantei.go.jp/jp/singi/novel_coronavirus/th_siryoutaiou_honbu_konkyo.pdf).

<sup>20</sup> Paul Gittings, “Tokyo 2020 Olympics: Japanese PM Abe insists Games to go ahead as planned,” *CNN*, 14 March 2020, <https://edition.cnn.com/2020/03/14/sport/tokyo-olympics-prime-minister-abe/index.html>.

March that it would postpone the Olympic Games.<sup>21</sup> After this announcement, the number of confirmed cases skyrocketed, leading some to question whether the government had intentionally reduced the PCR testing to artificially reduce the number of confirmed cases.<sup>22</sup> Remarkably, even after Canada and Australia announced that they would not send athletes to the Tokyo Olympics,<sup>23</sup> the government still had not announced the postponement of the Olympics. As a result, 60 per cent of the Japanese people felt the government mishandled the early stage of the coronavirus outbreak.<sup>24</sup>

On the first day of April, Prime Minister Shinzo Abe announced that the government would distribute two masks to each household.<sup>25</sup> However, many households have more than two members, and the distribution of cloth masks, which were initially said to be ineffective, was criticized as political performance and mocked as “Abenomask,” a pun on Abenomics, his signature economic policy.<sup>26</sup> Two days later, the government announced that it would give JPY 300,000 in cash relief to households whose finances have been depleted.<sup>27</sup> This measure, however, was criticized for its restrictive conditions and financial insufficiency.<sup>28</sup> Consequently, on 16 April, Prime Minister Abe announced that he would provide a blanket cash handout of JPY 100,000 per person and cancel its original plan.<sup>29</sup> The Diet passed an emergency budget worth JPY 25.69 trillion, including that cash handout, on 30 April.<sup>30</sup>

<sup>21</sup> Andrew Keh, “The Coronavirus and the Postponement of the Olympics, Explained,” *New York Times*, 25 March 2020, <https://www.nytimes.com/2020/03/25/sports/olympics/coronavirus-summer-olympics-postponed.html>.

<sup>22</sup> Mari Yamaguchi, “Tokyo’s infection spike after Olympic delay sparks questions,” *AP*, 29 March 2020, <https://apnews.com/c346402f4a0ef8796c6eb0afebe342f4>.

<sup>23</sup> Amir Vera and Jill Martin, “Canada and Australia will not send athletes to Tokyo Olympics,” *CNN*, 22 March 2020, <https://edition.cnn.com/2020/03/22/americas/canada-no-athletes-tokyo-olympics/index.html>.

<sup>24</sup> “60% in Japan feel government mishandled early stages of Covid-19 outbreak: poll,” *Japan Times*, 11 April 2020, <https://www.japantimes.co.jp/news/2020/04/11/national/politics-diplomacy/japan-government-mishandled-coronavirus-outbreak-survey/>.

<sup>25</sup> “Abe’s two-mask pledge met online with derision and humor,” *Japan Today*, 2 April 2020, <https://japantoday.com/category/politics/no-masking-the-mockery-japan-two-mask-pledge-ripped-online>.

<sup>26</sup> “Abenomask? Prime minister’s ‘two masks per household’ policy spawns memes on social media,” *Japan Times*, 2 April 2020, <https://www.japantimes.co.jp/news/2020/04/02/national/abe-two-masks-social-media/>.

<sup>27</sup> “Households to get 300,000 yen in relief for losses from coronavirus,” *Asahi Shimbun*, 3 April 2020, <http://www.asahi.com/ajw/articles/13269206>.

<sup>28</sup> “82% say government should compensate firms that shut down for virus,” *Japan Times*, 13 April 2020, <https://www.japantimes.co.jp/news/2020/04/13/national/politics-diplomacy/82-say-government-compensate-firms-shut-virus/?ct>.

<sup>29</sup> “Abe plans blanket 100,000-yen cash handout,” *NHK*, 16 April 2020, [https://www3.nhk.or.jp/nhkworld/en/news/20200416\\_36/](https://www3.nhk.or.jp/nhkworld/en/news/20200416_36/).

<sup>30</sup> “20endo hoseiyosanan 30nichi seiritsu e [2020 Supplementary Budget will be Passed on 30 April],” *Nikkei*, 30 April 2020, <https://www.nikkei.com/article/DGXMZO58630710Q0A430C2MM0000/>.

## D. Emergency Declaration

Eventually, the government declared a formal state of emergency on 7 April,<sup>31</sup> effective until at least 6 May, covering Tokyo and several other urban prefectures. Where it was applied, residents were requested to stay home to the extent possible,<sup>32</sup> the use of schools and commercial facilities was restricted on the governor's request or direction,<sup>33</sup> and the governor could use land and buildings to open temporary medical facilities.<sup>34</sup> In Japan, however, a formal state of emergency is much softer than elsewhere because it does not impose any legal obligations on the public. It is a requested lockdown that cannot be legally enforced. The government has no power to close businesses or force anyone to stay home.

Nevertheless, on 16 April, the government quickly expanded the coverage of the state of emergency nationwide,<sup>35</sup> and on 4 May, the Headquarters extended the nationwide state of emergency until the end of May.<sup>36</sup> Some wanted the government to lift the declaration, but the Headquarters indicated that partial easing of countermeasures would depend on local conditions. The government finally lifted the declaration on 14 May in thirty-eight prefectures, with the exception of eight metropolitan prefectures, including Tokyo, and started reopening the economy.<sup>37</sup> It announced revised basic guidelines for countermeasures during the next phase of reopening.<sup>38</sup>

## 3. Critical Tasks for the Government

### A. Ensuring Public Compliance without Force

In introducing countermeasures against a pandemic, it is critical to consider how the government can ensure public compliance. In contrast with the “lockdowns”

<sup>31</sup> Prime Minister of Japan and His Cabinet, *Declaration of a State of Emergency in response to the Novel Coronavirus Disease* (7 April 2020), [http://japan.kantei.go.jp/ongoingtopics/\\_00018.html](http://japan.kantei.go.jp/ongoingtopics/_00018.html).

<sup>32</sup> *New Influenza Special Measures Act*, art. 45(1).

<sup>33</sup> *New Influenza Special Measures Act*, art. 45(2), (3).

<sup>34</sup> *New Influenza Special Measures Act*, art. 49.

<sup>35</sup> Headquarters, *Shingata coronavirus kansenshō taisaku no kihonteki taisho shishin* [Basic Guidelines for Countermeasures against New Coronavirus Infection] (amended on 16 April 2020), [https://www.kantei.go.jp/jp/singi/novel\\_coronavirus/th\\_siryou/kihon\\_h\\_0416.pdf](https://www.kantei.go.jp/jp/singi/novel_coronavirus/th_siryou/kihon_h_0416.pdf).

<sup>36</sup> Headquarters, 33rd meeting, 4 May 2020, [https://www.kantei.go.jp/jp/98\\_abe/actions/202005/04corona.html](https://www.kantei.go.jp/jp/98_abe/actions/202005/04corona.html).

<sup>37</sup> Headquarters, 34th meeting, 14 May 2020, [https://www.kantei.go.jp/jp/singi/novel\\_coronavirus/th\\_siryou/sidai\\_r020514.pdf](https://www.kantei.go.jp/jp/singi/novel_coronavirus/th_siryou/sidai_r020514.pdf).

<sup>38</sup> Prime Minister and His Cabinet, *Shingata coronavirus kansenshō taisaku no kihonteki taisho houshin* [Basic Guidelines for Countermeasures against New Coronavirus Infection] (28 March 2020, revised on 14 May 2020), [https://www.kantei.go.jp/jp/singi/novel\\_coronavirus/th\\_siryou/kihon\\_h\\_0514.pdf](https://www.kantei.go.jp/jp/singi/novel_coronavirus/th_siryou/kihon_h_0514.pdf).

imposed in other countries, however, a declaration of a state of emergency in Japan does not carry penalties<sup>39</sup> to control activities and movement of the public within cities. Most of the public complied and stayed home, but because the measures did not carry penalties, some office workers went to work in Tokyo the day after the declaration.<sup>40</sup> And because the government refused to compensate business losses,<sup>41</sup> some commercial firms had to continue their operations to avoid bankruptcy.<sup>42</sup> As Abe explained, the stay-home request is merely a request, and was never intended to be enforced by the police<sup>43</sup>—who have no legal power to enforce the measures. There was no punishment for violating stay-home advice, and going out or walking around was not a crime.<sup>44</sup> Some of the pachinko parlors that attract huge numbers of customers refused to shut down, even when the local government published the names of these parlors as a form of sanction; they simply and steadfastly refused to comply. These forms of resistance prompted growing calls for stronger legal measures backed by criminal sanctions.<sup>45</sup> But the Japanese government was not willing to introduce any criminal penalties other than price gouging for personal protective equipment.

## B. Preventing the Medical Care System from Collapsing

One of the challenges faced by many countries, including Japan, was to guide the public response to possible infections to ensure that the medical care system was not suddenly overburdened. With a rapid increase in the number of infections, Japan maintained a policy of providing PCR testing only to persons who showed unique symptoms of Covid-19 and were highly likely to be infected. As a result, many people were refused testing. The government advised the public to stay home and take care of themselves if they felt unwell. In cases of a possible Covid-19 infection, everyone was urged to call the special telephone number and seek medical attention from a specialist, not a general practitioner. So long as the

<sup>39</sup> However, exceptional punishments are provided, such as when the business operator does not comply with the storage order. *New Influenza Special Measures Act*, art. 55(3) & arts. 76–78.

<sup>40</sup> “Morning after the State of Emergency Declaration,” *Nippon.com*, 8 April 2020, <https://www.nippon.com/en/news/ntv20200408001/morning-after-the-state-of-emergency-declaration.html>.

<sup>41</sup> “Japan’s opposition blasts lack of cash aid for regular people amid coronavirus emergency,” *Mainichi*, 8 April 2020, <https://mainichi.jp/english/articles/20200408/p2a/00m/0na/010000c>.

<sup>42</sup> “Major Japan cities go quiet after state of emergency declared,” *Mainichi*, 8 April 2020, <https://mainichi.jp/english/articles/20200408/p2g/00m/0na/061000c>.

<sup>43</sup> “Gaishutsu jishuku, keisatsu wa torishimaru? [Stay Home Request: Possible for the Police to Enforce?],” *Asahi Shimbun*, 7 April 2020, <https://www.asahi.com/articles/ASN476QPDN47UTFK032.html>.

<sup>44</sup> *Police Duties Execution Act*, art. 2(1).

<sup>45</sup> *Zaimushō pachinko kyugyou shiji houkaiseide bassokukitei mo* [Finance Minister Suggested the Possibility of Criminal Punishment by Statutory Amendment against Pachinko Parlors], *Nikkei*, 27 April 2020, <https://www.nikkei.com/article/DGXMZO58560700X20C20A4PP8000/>.



symptoms were not serious or there was no likelihood of cluster transmission, even those who felt sick would not be tested. This policy was endorsed by infectious disease experts to avoid the collapse of the medical care system for all the patients.<sup>46</sup> With the rapid increase in infected patients, however, the government faced the serious challenge of keeping the medical care system working.

The designation of the coronavirus under the *Infectious Disease Prevention Act* enabled the government to hospitalize infected persons at an institution for designated infectious diseases.<sup>47</sup> However, with the sudden increase of the infected patients, in Tokyo for example, the number of new cases exceeded available beds. Therefore, patients were crammed into designated hospitals, operating over capacity.<sup>48</sup> Some patients were not allowed to be hospitalized and had to wait at home.<sup>49</sup> The government was therefore forced to allow those with less severe symptoms to be treated in rented hotels or at home, leaving hospitals to treat more serious cases.<sup>50</sup>

As of May 2020, it remained to be seen how the Japanese medical system would weather the crisis.<sup>51</sup> There had been no serious discussion on triaging patients, for example, by refusing ventilators to patients with a slim chance of survival, such as elderly people with underlying health conditions. Honest discussion may have been required if the medical care system were facing a collapse.<sup>52</sup>

## 4. Critical Evaluation of the Responses and Challenges for Moving Forward

### A. The Uniqueness of the Japanese Approach

The Japanese government adopted basically a different approach from other countries such as South Korea, which provided testing to almost everyone,

<sup>46</sup> MHLW, *Shingata coronavirus kansensho taisaku senmonka kaigi* [Expert Council on New Coronavirus Infection], *Shingata coronavirus kansensho taisaku no kihon houshin no gutaika nimuketa kenkai* [Opinion for the Implementation of the Fundamental Guidelines for Countermeasures against New Coronavirus] (27 February 2020), [https://www.mhlw.go.jp/stf/seisakunitsuite/newpage\\_00006.html](https://www.mhlw.go.jp/stf/seisakunitsuite/newpage_00006.html).

<sup>47</sup> *Infectious Disease Prevention Act*, art. 19(1), (3).

<sup>48</sup> Satoshi Kutsuna, “Tonai no kansensho shitei iryokikan de naniga okotteirunoka,” *Yahoo Japan*, 28 March 2020, <https://news.yahoo.co.jp/byline/kutsunasatoshi/20200328-00170113/>.

<sup>49</sup> Satoshi Kutsuna, “Tonai no shingata rocona sinryo iryokikan no genjo,” *Yahoo Japan*, 5 April 2020, <https://news.yahoo.co.jp/byline/kutsunasatoshi/20200405-00171589/>.

<sup>50</sup> MHLW, memorandum (2 April 2020), <https://www.mhlw.go.jp/content/000618525.pdf>.

<sup>51</sup> The MHLW announced that it will loosen the requirement for receiving PCR testing, scrapping the requirement that the patients should show high fever beyond 37.5°C for four days. “PCR kensa soudan meyasu minaoshi” [Reconsideration of the Criteria to Ask for PCR Testing], *NHK*, 8 May 2020, <https://www3.nhk.or.jp/news/html/20200508/k10012423041000.html>.

<sup>52</sup> “Kosuke Takahashi, Shinaga corona kinkyu jitai sengen, nihon ni tarinai nowa mask yori kokumin no consensus da,” *Yahoo Japan*, 7 April 2020, <https://news.yahoo.co.jp/byline/takahashikosuke/20200407-00172000/>.

testing only those persons who were likely to test positive. As was explained earlier, the goal was to limit the number of persons going to hospitals for testing so hospitals and health professionals could focus their attention on more serious cases. Otherwise, those with mild symptoms could overwhelm hospitals and paralyze the medical care system. Moreover, testing was not perfectly reliable—some who are infected could test negative, while some who are not might test positive. Japan therefore focused on the treatment of serious cases to reduce the death toll. It focused on preventing cluster transmission in facilities such as nursing homes, long-term care houses, and hospitals. The primary goal was not to stop the spread of the infection but to reduce the number of serious patients and ultimately the number of patients who ended up dying.<sup>53</sup> In other words, the primary objective was to keep the death toll to a minimum.

This policy could work so long as members of the public stayed home when they felt sick or were concerned about possible infection and avoided contact with others to prevent further spread. However, many people were frustrated because they could not be tested, leading to growing calls to extend testing to a broader range of people and provide hospitalization and treatment for those with mild or no symptoms.<sup>54</sup> While the Japanese approach seemed to be working as of May 2020 (the death toll in Japan was far smaller than in other countries), it was unclear whether it would be ultimately successful.

## B. The Sufficiency of Available Countermeasures

When the government declared a state of emergency on 7 April, Prime Minister Abe said there would be “no city blockade.” As noted earlier, since the declaration didn’t force the public to stay home, many citizens went out. It is surely debatable whether this approach was sufficient. The government might have needed more flexible legal powers. Moreover, because the government refused to compensate business losses, some businesses could not afford to shut down and employees had to continue to work. Therefore, some observed that a shutdown request was not effective without a legal sanction and adequate compensation.<sup>55</sup> Especially in the twenty-first century, the number of “working poor”—poor people who have jobs but cannot save money and whose annual income is less than JPY 2 million—has been expanding because

<sup>53</sup> MHLW, *Shingata coronavirus kansensho taisaku no kihon houshin no gutaika nimuketa kenkai*.

<sup>54</sup> The government gradually increased the number of available PCR tests. As of 14 May 2020, 357,626 tests were conducted, testing 230,882 people. MHLW, *Shingata coronavirus kansenshō no genzai no jōkyō to kouseiroushō no taiou nitsuite*.

<sup>55</sup> Takanori Fujita, “Abe sori daijin, minna ‘kinkyū jitai sengen’ wo dasaretemo hoshō ga nakereba gaishutsu shite hataraku shikanainodesu,” *Yahoo Japan*, 6 April 2020, <https://news.yahoo.co.jp/by-line/fujitatakanori/20200406-00171772/>.

of the liberalization of the labour market. They cannot live if they do not continue to work, so they are forced to choose between risking starvation or risking infection. Many are blue-collar workers who cannot work remotely.<sup>56</sup> Without their agreement and compliance, stay-home requests cannot be effective.

Although the government refused compensation, on 7 April it announced a JPY 108 trillion emergency support package to help the economy survive the pandemic.<sup>57</sup> The package included a JPY 4 trillion cash handout that would distribute JPY 300,000 to individual households as explained before (however, it ended up distributing JPY 100,000 to everyone). It also included JPY 2 million in relief for each small business and JPY 1 million for each owner-managed business, including freelancers whose annual sales dropped by half or more compared to the previous year. But it was not sufficient to compensate for losses caused by closing businesses. Moreover, the application process for receiving money was so burdensome and time-consuming and the conditions so strict that many companies and individuals did not receive any help.<sup>58</sup>

In addition, with internet cafes planning to close, “internet cafe refugees”—who have no home other than internet cafes—faced the prospect of losing their residences,<sup>59</sup> becoming homeless. Yuriko Koike, Tokyo’s governor, announced her city would provide temporary houses for them, but since the government required them to prove they had been in Tokyo for six months or longer, problems remained.<sup>60</sup> It was therefore unsurprising that many people questioned whether the countermeasures were sufficient or appropriate.

### C. Complexity and Rigid Structure of the Infectious Disease Prevention System

Japan does not have any emergency legislation that could be used in this kind of public health emergency. Even in the absence of emergency legislation,

<sup>56</sup> Furthermore, traditional practice in Japanese business, using “personal signature stamps,” forces business persons to go to their offices. “Traditional Japanese seal system hampers telework for some,” *Japan Times*, 13 April 2020, <https://www.japantimes.co.jp/news/2020/04/13/business/corporate-business/traditional-japanese-seal-system-hampers-telework/>.

<sup>57</sup> Ryusei Takahashi, “Tokyo announces monthlong action plan to contain coronavirus outbreak,” *Japan Times*, 10 April 2020, <https://www.japantimes.co.jp/news/2020/04/10/national/tokyo-monthlong-action-plan-covid-19/>.

<sup>58</sup> Satoshi Sugiyama, “Abe administration faces flak over hesitance to compensate virus-hit businesses,” *Japan Times*, 15 April 2020, <https://www.japantimes.co.jp/news/2020/04/15/national/politics-diplomacy/shinzo-abe-coronavirus-business-compensation/>.

<sup>59</sup> Sakura Murakami, “Tokyo’s internet cafe ‘refugees’ number 4,000, survey says,” *Japan Times*, 29 January 2018, <https://www.japantimes.co.jp/news/2018/01/29/national/social-issues/internet-cafe-refugees-3000-tokyo-survey-says/>.

<sup>60</sup> Miwa Suzuki, “Japan’s homeless internet cafe refugees seek shelter,” *Japan Today*, 15 April 2020, <https://japantoday.com/category/national/japan%27s-homeless-%27net-cafe-refugees%27-see-shelter-amid-virus-woe>.

however, the legislature could enact an infectious disease prevention statute to allow for a flexible and liberal application. Yet, the current infectious disease prevention system, consisting of the *Infectious Disease Prevention Act* and the *New Influenza Special Measures Act*, is complicated and inflexible. The *Infectious Disease Prevention Act* divides various infectious diseases into eight different categories and provides for somewhat different countermeasures. Moreover, the *New Influenza Special Measures Act* is not well integrated into the general framework of the infectious disease prevention system. Furthermore, the *Immigration Control and Refugee Act* and the *Quarantine Act* use somewhat different classifications to respond to infectious disease and are both also inflexible.

Concerns about granting broad and unlimited power to the government, even against the infectious disease, have forced the legislature to be specific and keep restrictions on freedom of movement to the necessary minimum. But if Japan faces a much more vicious and contagious infectious disease, these limits might be fatal. Japan urgently needs to revisit the whole system of infectious disease prevention.

#### D. Xenophobia, Discrimination Against Patients or Medical Workers and Their Families

Finally, the Covid-19 pandemic triggered persistent discrimination against Chinese people because the outbreak started from Wuhan, China. Some restaurants, for example, posted signs that read “No Chinese Allowed,” triggering huge backlash against such discrimination.<sup>61</sup> On 5 March, someone sent a hate letter to a restaurant in Yokohama’s Chinatown.<sup>62</sup> Since not all Chinese people were infected with the new coronavirus and non-Chinese people could also be infected, the exclusion of all and only Chinese people was highly unreasonable.

In addition, patients and their families, suspected patients and their families, and recovered patients also faced discrimination<sup>63</sup> as if they had committed a wrong. Moreover, medical care professionals providing treatment to Covid-19 patients<sup>64</sup> also faced discrimination. Many people simply feared that they would transmit the infection. Unfortunately, there is currently no civil rights or human rights legislation to ban such unreasonable private discrimination. Such

<sup>61</sup> Aristos Georgiou, “Japanese Shop Owner Tries to Ban Chinese Tourist over Coronavirus Fears,” *Newsweek*, 22 January 2020, <https://www.newsweek.com/japanese-shop-owner-ban-chinese-tourists-coronavirus-1483420>.

<sup>62</sup> “Racist letters sent to Yokohama Chinatown restaurants amid Japan coronavirus fears,” *Mainichi*, 7 March 2020, <https://mainichi.jp/english/articles/20200307/p2a/00m/0na/004000c>.

<sup>63</sup> “Racist letters sent to Yokohama Chinatown restaurants amid Japan coronavirus fears.”

<sup>64</sup> “Coronavirus fears give rise to stigma in Japan’s local communities,” *Japan Times*, 9 April 2020, <https://www.japantimes.co.jp/news/2020/04/09/national/social-issues/coronavirus-stigma-japan/>.

widespread discrimination suggests the urgent necessity of passing remedial civil rights or human rights legislation.

### E. Who Should Play a Leading Role during the Public Health Emergency?

The Covid-19 pandemic raises another very important question: Who should take a leading role in responding to this kind of international public health crisis and the spread of a new infectious disease in Japan? As of May 2020, all fundamental decisions on countermeasures against the new coronavirus were made by the Headquarters, headed by the prime minister and consisting of all state ministers. Indeed, it is common in Japan to establish this kind of coordinating body to respond to an emergency. But in an emergency, it is meaningless to invite many members to gather together and discuss what to do. It may be better to designate a particular agency or a person who can take charge and make all critical decisions.

In the United States, the Centers for Disease Control and Prevention (CDC) is established as such an agency.<sup>65</sup> The CDC is an agency inside the Department of Health and Human Services whose mission is to “protect America from health, safety and security threats, both foreign and in the U.S. Whether diseases start at home or abroad, are chronic or acute, curable or preventable, human error or deliberate attack, CDC fights disease and supports communities and citizens to do the same.”<sup>66</sup> The CDC thus stands at the forefront of countermeasures against infectious diseases and, notably, has a mission of securing the health of the nation against deliberate attacks as well. Unfortunately, Japan does not have such an agency. Although the CDC has been criticized, even in the United States, for having extremely broad powers, and its role in responding to the Covid-19 crisis can be questioned, it is clear that some sort of leading agency is necessary during a time of emergency.

This institutional issue leads to another question as to whether Japan should have a doctor who can play a leadership role in responding to a public health emergency. Unlike some other countries, Japan apparently does not have a chief medical officer or someone who could decide, based on medical training, what kind of countermeasures should be introduced. The government does solicit advice from experts on infectious disease, but ultimately, there is no one medically

<sup>65</sup> CDC, <https://www.cdc.gov>.

<sup>66</sup> “Organization,” CDC, <https://www.cdc.gov/about/organization/cio.htm>.

trained who is empowered to make a critical decision. This matter surely needs to be re-examined.

## F. Absence of Emergency Power

There is also a concern about the absence of emergency legislation in Japan. Moreover, since the Constitution of Japan, 1946 does not have any provision for a state of emergency, many believe that an emergency power is constitutionally precluded. As a result, some are calling for the adoption of emergency clauses through an amendment to the Constitution.<sup>67</sup> Prime Minister Abe has been an ardent advocate of a constitutional amendment, and he referred to his hope to add the emergency clause to the Constitution again during the Covid-19 pandemic.<sup>68</sup> His proposal was criticized for involving “constitutional reforms that take advantage of disasters.”<sup>69</sup>

Even in the absence of a constitutional provision on emergencies, the legislature might be allowed to enact emergency legislation, authorizing the government during the time of emergency to exercise broad powers. In the past, members of the public and academics have voiced strong concerns with granting broad and unlimited powers to the government, including the possibility of government abuse and misuse of all these powers, preventing the enactment of such emergency legislation. As a result, even during the time of a public health emergency, the government can rely only on specific infectious-disease-prevention statutes. The Covid-19 pandemic provides a good opportunity to revisit this issue.

One of the issues to be considered is whether the declaration of emergency that triggers such broad government powers should be approved by the legislature in advance. Under the *New Influenza Special Measures Act*, the government can declare a state of emergency on its own, without the approval of the Diet.<sup>70</sup> Considering the history of gross abuse of emergency powers in Japan, there is a strong case for requiring advance approval by the Diet if Japan decides to introduce true emergency legislation. Moreover, in light of that past history as well as recent examples of emergency powers being used to bolster dictatorships in

<sup>67</sup> Akira Momochi, “New Epidemic Shows Need for Emergency Clause in Constitution,” *Japan Forward*, 13 February 2020, <http://japan-forward.com/speaking-out-new-epidemic-shows-need-for-emergency-clause-in-constitution/>.

<sup>68</sup> Shusho, “Kinkyu jitai joko no kaiken rongi unagasu,” *Nikkei*, 7 April 2020, <https://www.nikkei.com/article/DGXMZO57773700X00C20A4PP8000/>.

<sup>69</sup> Asaho Mizusima, “Shingata Coronavirus kansenshō to kinkyu jitai jōkō: Matamo ‘Sanji binjōgata kaiken,’” *Asaho.com*, 24 February 2020, <http://www.asaho.com/jpn/bkno/2020/0224.html>.

<sup>70</sup> *New Influenza Special Measures Act*, art. 32(1).

some countries, there is a very strong argument that emergency powers should not be able to restrict the freedom of expression or the freedom to criticize the government.<sup>71</sup>

## 5. Conclusion

Despite the strong criticisms and deep-rooted concerns with the insufficiency of the government response to Covid-19, together with a limited availability of PCR testing, the government's concentration on the treatment of more serious patients, its focus on prevention of cluster transmission, and its soft lockdown without any legal sanctions might be sufficient to achieve the primary goal of keeping the death toll to the minimum. However, it is not clear whether it could be ultimately successful as the pandemic continues to unfold, nor is it clear whether Japan could respond effectively to the outbreak of a much more deadly disease in the future. Japan surely needs to re-evaluate its response to Covid-19 and reconsider, in a holistic and systematic way, the entire infectious disease prevention system and the possibility of emergency powers during a public health crisis.<sup>72</sup>

<sup>71</sup> *International Covenant on Civil and Political Right*, art. 4(2).

<sup>72</sup> For a more detailed analysis of Japan's response to Covid-19, see Shigenori Matsui, "Pandemic: COVID-19 and Public Health Emergency." Unpublished manuscript, last modified 27 May 2020, on file with the editor. Microsoft Word file.

# Thailand: Emergency Responses or More Social Turbulence?

*Rawin Leelapatana\* and Chompunoot Tangthavorn\*\**

## 1. Introduction

Like many other countries, Thailand has been hit hard by the outbreak of Covid-19, a disease caused by a newly discovered coronavirus. According to the Ministry of Health, the spread of the coronavirus in the kingdom can be divided into three main stages: infections from abroad, confined domestic infections, and full-blown epidemic.<sup>1</sup> By early January 2020, Thailand became the first nation outside mainland China in which a positive coronavirus case, a Chinese citizen, was confirmed.<sup>2</sup> After entering the first stage in January, the situation in Thailand continued to deteriorate steadily, taking the country into the second stage by the end of the month.

To address a deteriorated situation, the government decided to employ wide-ranging executive measures. On 1 March, the public health minister declared Covid-19 “a dangerous communicable disease” under Section 6 of the Communicable Diseases Act 2015 (the 2015 Act). In doing so, provincial governors were empowered to issue orders necessary to control the epidemic within their jurisdiction. Despite the government’s persistent denials, evidence indicated that Thailand de facto did reach the full-blown epidemic stage. On 6 March, Lumpini Stadium in Bangkok hosted a boxing bout with approximately 2,500 spectators, including several “super-spreaders” who were unaware that they were infected.<sup>3</sup> The number of positive cases and the nationwide death

\* Lecturer, Faculty of Law, Chulalongkorn University.

\*\* Senior Research Fellow, Parliamentary Academic Support Office, King Prajadhipok’s Institute. We would like to give our special thanks to Professor Andrew Harding for his helpful comments.

<sup>1</sup> “Doctors issue Stage-3 warning,” *Bangkok Post*, 14 March 2020, <https://www.bangkokpost.com/thailand/general/1878380/doctors-issue-stage-3-warning>.

<sup>2</sup> Elizabeth Cheung, “Wuhan pneumonia: Thailand confirms first case of virus outside China,” *South China Morning Post*, 13 January 2020, <https://www.scmp.com/news/hong-kong/health-environment/article/3045902/wuhan-pneumonia-thailand-confirms-first-case>.

<sup>3</sup> “Army boxing promoters ‘wrong’ to ignore virus warning,” *Bangkok Post*, 26 March 2020 <https://www.bangkokpost.com/thailand/general/1887055/army-boxing-promoters-wrong-to-ignore-virus-warning>.



toll then accelerated rapidly. On 26 March, the government therefore decided to heighten its response by invoking the 2005 Decree on Public Administration in State of Emergency (the 2005 Decree), resulting in the imposition of several lockdown measures. Thai nationals living and studying abroad were required to apply for a health certificate issued by a physician and approved by the Royal Thai Embassy before boarding any inbound flights.

Thailand's legal and regulatory responses to Covid-19 precipitated national, local, and social consequences. They clearly exposed the tension between two viewpoints: some regarded wide-ranging executive measures as expedient and necessary tools to combat Covid-19; others worried about their adverse effects on the rule of law and other negative socio-economic consequences. In this chapter, we consider *whether the legal and regulatory measures applied by the Thai government have been suitable, necessary and effective for a global challenge such as Covid-19, taking into account their legal and social consequences*. The application of these measures, we argue, reflected the hegemony of the tradition of paternalistic nationalism. However, the unique nature of this pandemic has exacerbated, rather than mitigated, a social upheaval in a society already struggling with economic stagnation and intractable political polarization. This main argument will be expanded in sections 4 and 5. But first, we need to explain legal and regulatory responses adopted by the government—and their legal and social enforcement mechanisms—in sections 2 and 3, respectively.

## 2. Legal and Regulatory Responses by the Thai Government

The three-stage Covid-19 response model guided the government's legal and regulatory response. As we can see, during the period between the end of the first and the beginning of the third stage, the 2015 Act and several notifications issued by the Civil Aviation Authority of Thailand (CAAT), an independent government agency, were the key regulatory mechanisms for controlling the virus transmission. Yet, even before the country formally entered the third stage, the government chose to resort primarily to the 2005 Decree. By its conferral of wide emergency discretionary powers to the prime minister, the invocation of the decree immediately raised the issue of a democratic roll-back.

We begin with the contours of the government's pre-third stage response plan. The CAAT was among the first government departments assigned with the task of preventing the virus transmission from abroad. As Thailand entered the second stage, the CAAT issued a notification on 18 March 2020, ordering all air operators to conduct the so-called "primary exit screening," that is, to monitor the health status of all passengers travelling from countries classified as high-risk Covid-19, such as the United Kingdom and France. A "fit-to-fly" health

certificate issued by a physician, obtained no more than seventy-two hours before boarding an aircraft and declaring the passenger Covid-free, was required. Any passenger, regardless of nationality, diagnosed as infected or classified as a suspected case was to be denied embarkation.

The second-stage response plan became more intense after the minister of public health declared Covid-19 “a dangerous communicable disease” in March. Under Section 31 of the 2015 Act, such declaration obliged owners or anyone in charge of residential premises to swiftly inform a communicable disease control officer of any case of infection or suspected infection in their dwellings. This officer—generally appointed from village chiefs and sub-district headmen—was subsequently required by Section 34 to designate potential isolation or quarantine places for those confirmed or suspected of being infected. To further control transmission, a provincial governor was also empowered by Section 35 of the same legislation to order the temporary closure of places attracting large crowds of people, such as markets, theatres, and educational institutes, and to prohibit anyone confirmed to be or suspected of being infected from entering such places. Many governors used these powers effectively. For instance, the governor of Sukhothai invoked this provision to order the closure, on 18 March, of three villages with Covid-19 cases,<sup>4</sup> while others such as the governors of Bangkok, Nonthaburi, and Phitsanulok cited the same provision to close down markets, boxing bouts, theatres, department stores, bars, and educational institutes.<sup>5</sup>

It therefore appears that provincial governors held an authority delegated from the central government under the 2015 Act to determine what measures should be adopted in their precincts. Nevertheless, it was also evident that some governors declined to wield their Section 35 powers. These divergent practices ostensibly revealed the lack of coherence and coordination on part of provincial government. To resolve this problem amid a deteriorating situation, Prime Minister Prayuth Chan-o-cha imposed a state of emergency under the 2005 Decree between 26 March and 30 April 2020. Our analysis in section 4 will expose the shortcomings of this strategy. However, before elaborating on these shortcomings, we need to primarily examine the key features of the 2005 Decree in more detail.

Unlike the 2015 Act, which bestows upon provincial governors the authority to issue measures necessary for combatting those diseases, Section 5 of the decree empowers the prime minister, with cabinet approval, to declare a local or nationwide state of emergency for a period of no more than three months

<sup>4</sup> “The governor of Sukhothai ordered the closure of three villages,” *NationTV*, 19 March 2020, <https://www.nationtv.tv/main/content/378766498/>.

<sup>5</sup> The Announcement of Bangkok Metropolitan No. 2, 21 March 2020; The Order of Nonthaburi Province No. 1072/2563; The Order of Phitsanulok Province No. 2193/2563.

(Section 4). He is also empowered to establish an ad hoc Centre for Resolution of Emergency Situation (CRES). Among the wide range of emergency powers enshrined in Sections 9 and 11, the prime minister holds a substantial degree of discretion in determining and adopting measures deemed appropriate for the situation at hand.

In the case of the Covid-19 pandemic, several by-laws were issued under the decree to mitigate and control its spread. Interestingly, clauses enshrined in Regulation No. 1 incorporated several “lockdown” measures previously issued under the 2015 Act, namely, the prohibition of entry into sites designated as Covid-19-prone areas (Clause 1), the closure of public places (Clause 2), and the imposition of travel conditions and restrictions (Clauses 3 and 13). It also adopted other preparedness and prophylactic measures, including the preparation of quarantine facilities (Clause 7(3)), the compulsory wearing of surgical or cloth masks (Clause 11(2)), and the requirement for vulnerable groups—elderly people over seventy years of age, children under five years old, and those with chronic non-transmissible diseases—to stay in their residences (Clause 8). The regulation also incorporated the CAAT’s notification, requiring any inbound passengers to obtain the seventy-two-hour fit-to-fly health certificate approved by the Royal Thai Embassy before boarding an aircraft (Clause 3). Apart from these measures, it also permitted the prime minister to employ special authorities exclusively granted by the 2005 Decree, namely, the prohibition of social gatherings (Clause 10) and the prohibition of dissemination of “false” or “fake” reports on Covid-19 (Clause 6). With respect to the latter, the CRES was exclusively entrusted with the task of organizing press conferences and briefings on Covid-19 responses. Later, on 2 April 2020, the prime minister issued Regulations Nos. 2 and 3 imposing a nationwide curfew—a power authorized by Section 9(1) of the 2005 Decree—between 22:00 and 04:00 between 3 April and 30 April. On 27 March, he extended the state of emergency to 31 May 2020.

### 3. Legal and Social Enforcement Mechanisms

Having examined legal and regulatory responses to Covid-19, we will now examine how these measures were enforced. In Thailand, criminal and administrative sanctions were the primary tools for enforcing public health measures enshrined in both the 2015 Act and the 2005 Decree. At the outset, a failure to comply with either law, including Regulations Nos. 1 and 2 under Section 9 of the 2005 Decree, could result in criminal penalties as follows: a fine not exceeding THB 20,000 for failing to notify an infected or suspected infection case and for violating an order issued by a communicable disease control officer under Sections 50 and 51 of the 2015 Act, respectively; imprisonment of up to one year

or a fine of up to THB 10,000 or both for entering or exiting a disease-infected zone with no permission under Section 52 of the 2015 Act; or imprisonment of up to two years or a fine of not exceeding THB 40,000 or both for violating Regulations Nos. 1 and 2 under Section 9 of the 2005 Decree as designated by Section 18 of the same decree. In the first ten days after the 2005 Decree was invoked, more than 10,000 individuals were charged with violating the 2005 Decree, notably the curfew and the ban of social gatherings.<sup>6</sup>

State officials could also turn to administrative enforcement mechanisms pursuant to the by-laws issued under the 2015 Act and the 2005 Decree. While the enforcement of administrative orders could, in theory, be reviewed by the Administrative Court, an ouster clause in Section 16 of the 2005 Decree provided Regulations Nos. 1 and 2 with official impunity. Regrettably, in 2010, the Constitutional Court affirmed the constitutionality of this clause, citing its essence in enabling the state to urgently quell threats to national security.<sup>7</sup> This precedent was critically tested in late March 2020 after the Administrative Court was asked by a Thai citizen living in the Republic of Ireland to review the legality of the CAAT's fit-to-fly notification. This case was challenging because at the time the review took place, this requirement was already incorporated into Regulation No. 1 under Section 9 of the 2005 Decree. The Administrative Court was accordingly forced to decide whether to acknowledge such incorporation, thus yielding to the ouster clause.<sup>8</sup>

Without corresponding social support, however, the official enforcement of Covid-19 measures may well have been futile. Two examples suggest how non-state actors helped strengthen the government's emergency policies by engaging in public criticisms on social media. To begin with, on 3 April 2020, 158 inbound passengers arriving at Suvarnabhumi Airport were informed to go through self-quarantine for fourteen days at the Sattahip naval base in the east. However, almost all of them refused to cooperate, while some even fled the airport. Although military officials at Suvarnabhumi could have arrested and placed all these passengers under "forced quarantine," they instead chose to negotiate and eventually allowed them to self-quarantine at home.<sup>9</sup> This decision generated public criticism on social media, castigating the government for their failure to strictly enforce the 2005 Decree and the passengers for their lack of public responsibility. In response to such immense social pressure, on the following day, the prime minister enforced the 2005 Decree, ordering all of the passengers,

<sup>6</sup> "10 days: 9,000 cases of Emergency Decree Violation," *ThaiPBS*, 14 April 2020, <https://news.thaipbs.or.th/content/291145>.

<sup>7</sup> Constitutional Court decision No. 9/2553, 2010.

<sup>8</sup> See section 4.B.

<sup>9</sup> "Thai returnees told to report for state quarantine," *Bangkok Post*, 4 April 2020 <https://www.bangkokpost.com/thailand/general/1893095/thai-returnees-told-to-report-for-state-quarantine>.

including those at home, to immediately report to Suvarnabhumi Airport or the Damrongtham Centre of the Ministry of Interior in their provinces. A similar pattern could be seen in the context of the rise of multiple mask-donation campaigns. Between February and March 2020, some politicians and private companies were accused of having been involved in massive hoarding of face masks.<sup>10</sup> As mentioned earlier, Regulation No. 1 under the 2005 Decree made the wearing of a surgical or cloth mask compulsory. Given the acute shortage of surgical masks, this response appeared almost fictitious. However, this problem was mitigated after individuals and private corporations launched a number of face-mask donation campaigns.

#### 4. The Thai Government's Covid-19 Response Plan Assessed

As shown in sections 2 and 3, it can be seen that the Thai government adopted a ramped-up response to Covid-19, which, according to critics, “reflected Prayuth’s deep-seated authoritarian-oriented thinking.”<sup>11</sup> Considering that the prime minister had risen to power through a military takeover in 2014, it was not surprising that he would shift from relying on a delegated response under the 2015 Act to a more centralized approach under the 2005 Decree. He even propagated a slogan, “health precedes liberty,” to justify this shift. The latter approach clearly enabled the prime minister to consolidate a commanding role. In Regulation No. 1, Prayuth required Bangkok and provincial governors to consider the temporary closure of public and crowded places. Here, a minimum requirement was set under Clause 2 of Regulation No. 1 to close schools, universities, sport arenas, and entertainment places, such as theatres and pubs, gyms, and massage parlours. However, the greater limitations on individual rights and freedoms under by the Emergency Decree, together with the ouster clause, jeopardized the rule of law. At the same time, as the social enforcement discussed in section 3 shows, it is misleading to conclude that the authoritarian-oriented approach could, by itself, guarantee a successful response to Covid-19; its success also depended on social support and acquiescence. Therefore, to assess the success of the government’s response, we need to consider not only their rule of law consequences but also their socio-economic impact.

<sup>10</sup> “Thai ministers says aid not involved in massive mask-hoarding,” *The Thaiger*, 9 March 2020, <https://thethaiger.com/hot-news/politics/minister-says-aid-not-involved-in-massive-mask-hoarding>.

<sup>11</sup> Khemthong Tonsakulrungruang and Rawin Leelapatana, “Health Before Rights and Liberties: Thailand’s Response to COVID-19,” *Verfassungsblog*, 8 May 2020, [https://verfassungsblog.de/health-before-rights-and-liberties-thailands-response-to-covid-19/?fbclid=IwAR0N8-cW6tibMP2yiV\\_j-zJBV4iQ1YhHatuWsQZNNtLz88eCo7JGtiutzUk](https://verfassungsblog.de/health-before-rights-and-liberties-thailands-response-to-covid-19/?fbclid=IwAR0N8-cW6tibMP2yiV_j-zJBV4iQ1YhHatuWsQZNNtLz88eCo7JGtiutzUk).

### A. The State of Emergency Reassessed

We begin by examining whether the 26 March emergency declaration was genuinely required to respond to the outbreak. We answer this question by reconsidering a key objective behind the 2005 Decree. According to Section 4 of the decree, this law seeks to eradicate an emergency situation, such as terrorism or war, giving rise to threats to public order, national independence, territorial integrity, individual rights and liberties, or the throne. Put simply, it allows the government to take hardline measures against people or ideologies labelled as public enemies. In practice, it had been invoked, between 2008 and 2014, to deal with a series of mass protests resulting from the incessant conflict between the royalist-conservative, pro-junta faction and its pro-democracy counterpart as well as between 2004 and present in response to the Malay-Muslim insurgency in the south. The declaration of the state of emergency, in effect, turned a coronavirus into a public enemy equivalent to terrorists and rioters. Nonetheless, this approach was dubious.

Employing hardline security forces against an invisible microbe is absolutely futile. No doubt, Covid-19 generated a nationwide sense of desperation which required an emergency response. However, what the people really craved during the virus spread were not tanks nor submarines, but Covid-19 test kits, face masks, and other life-saving medical tools. Given its physical security-oriented nature, a state of emergency under the 2005 Decree was not designed to address these public health concerns. By contrast, public health measures directly aimed at designating criteria and conditions necessary for addressing a pandemic are set out clearly in the 2015 Act.

By way of comparison, at the time that Thailand declared a public emergency, other high-risk Covid-19 countries such as Taiwan, South Korea, Malaysia, and Singapore were succeeding in coping with the outbreak without resorting to emergency powers or making a trade-off between national security and a transparent, rule-of-law friendly approach. In Taiwan, the exercise of “society-oriented approach,” notably the use of public health technology and other collaborative projects between the government and civil society groups, proved to be highly successful strategies.<sup>12</sup> These experiences cast doubt on the need for a “health precedes liberty,” state-of-emergency response. The Thai government’s adoption of a non-transparent response to Covid-19 caused public frustration and confusion. Nevertheless, a more transparent approach, with largely equivalent powers, would have been possible under the 2015 Act.

<sup>12</sup> See Chang and Lin, Chapter 3, this volume; Marcin Jerzewski and Kuan-Ting Chen, “Taiwan’s Health Diplomacy Didn’t Start with the COVID-19 Crisis,” *The Diplomat*, 16 April 2020, <https://thediplomat.com/2020/04/taiwans-health-diplomacy-didnt-start-with-the-covid-19-crisis/>.

## B. Legality of Emergency Measures

Having assessed the necessity of the declaration of the state of emergency, we will now analyze the legality of emergency measures prescribed in the Regulations Nos. 1 and 2 issued under Section 9 of the 2005 Decree. As illustrated in section 3, various measures were imposed by the prime minister to combat Covid-19. In this section, however, we will focus only on those criticized for posing the most serious threats to legality and promoting state privilege and impunity: the fit-to-fly certificate, the prohibition of the stockpiling of goods, and the lockdown policy.

The fit-to-fly health certificate roused public criticism regarding its necessity and constitutionality for two reasons. First, the incubation period of a coronavirus varies between one and fourteen days, and some carriers might even be asymptomatic. For this reason, the fit-to-fly requirement accordingly violated the principle of proportionality, especially the suitability test, enshrined in Section 26 of the Thai Constitution, which requires that restricting measures imposed by the state must be capable of realizing the desired end (i.e., to prevent the spread of Covid-19). Issued within a short period of time, the seventy-two-hour health certificate could not certify that a person was Covid-19-free.<sup>13</sup> In our opinion, the screening of inbound passengers and the mandatory fourteen-day quarantine were sufficient, efficient, and less burdensome means to prevent imported cases.

Secondly, as mentioned earlier, the legality of the CAAT's fit-to-fly notification was challenged before the Administrative Court by a seeking-to-return Thai national on the grounds that it impinged excessively upon his right to return to his own country under Section 39 of the Constitution and that its issuance rested upon no legal basis. Given that the review took place shortly after the measure was incorporated into Regulation No. 1, the Administrative Court chose to yield to the presence of the ouster clause in Section 16 of the 2005 Decree, thus dismissing the case.<sup>14</sup> But the judges hinted that the plaintiff was still entitled to file the lawsuit before the Civil Court, which enjoys general jurisdiction. Before the Civil Court, the same plaintiff argued that the incorporation by the prime minister of the fit-to-fly measure into Regulation No. 1 constituted a tort. Nevertheless, the petition was again rejected. According to the Civil Court, as the prime minister's issuance of the fit-to-fly requirement in Regulation No. 1 was justified by Section 9(4) of the 2005 Decree, such action did not constitute a tort.<sup>15</sup> These rulings confirmed the precedent set by the Constitutional Court in

<sup>13</sup> "Fit-to-fly does not help prevent COVID-19," TDRI, 4 April 2020, <https://tdri.or.th/2020/04/fit-to-fly-certificate-covid-19/>.

<sup>14</sup> The Administrative Court Red case no. 446/2563.

<sup>15</sup> The Civil Court's dismissal of Black case no. p.1864/2563.

2010 that the legality of the prime minister's authority under the 2005 Decree is exempted from judicial review. No doubt, they help entrench a culture of impunity within the Thai constitutional landscape by enabling ruling elites to evade scrutiny and accountability.

In addition to the fit-to-fly requirement, the prohibition on hoarding goods and the lockdown policy also suffered legality-related problems. The prohibition on hoarding goods in Clause 4 of Regulation No. 1, we contend, was *ultra vires*, as nowhere does the 2005 Decree authorize the imposition of such a measure. Also, according to critics, Thailand already possesses the 1954 Anti-Hoarding Act and the 1999 Price Control Act, which deal with profiteering behaviours under normal criminal procedural law, so the use of Clause 4 was redundant.<sup>16</sup> Meanwhile, the ban of public gatherings in Clause 5 of Regulation No. 1 appeared to exempt the state, considering that the regulation still allowed governmental ceremonies to be organized, provided that their organizer complied with the disease-prevention measures. From the perspective of government critics, such ban was imposed to restrict freedom of expression rather than to prevent transmission of the virus. Again, the ouster clause prevents these legality challenges from being reviewed judicially.

### C. Adverse Social Effects

Apart from placing the rule of law more in jeopardy, some of the Thai government's Covid-19 response measures also generated counterproductive socio-economic consequences. When perceiving threats to their own health, such as the possible transmission caused by passengers fleeing the airport to avoid state-imposed quarantine, many Thais seemed ready to support official enforcement of the self-quarantine requirement. However, when it came to socio-economic grievances, the situation has been totally different. Not only did the authoritarian-oriented approach appear to be an ineffective response, but it even undermines public support. Our argument here is supported by three incidents.

To begin with, apart from the proportionality of the fit-to-fly requirement, its social impact was no less worrying. Obtaining a medical certificate in some countries such as the United Kingdom and Japan is deterrent as a prior appointment with a physician up to seven days is required.<sup>17</sup> It was therefore arduous for returning Thais to do so amid the rising number of global infections. Meanwhile, rather than taking responsibility for all costs incurred for applying for the health certificate, the government pushed the burden on returnees. In

<sup>16</sup> Tonsakulrungruang and Leelapatana, "Health Before Rights."

<sup>17</sup> "Fit-to-fly."



some countries, such costs exceeded USD 100.<sup>18</sup> Compounding the burden, returning Thais were also required to have their health certificated approved by the Royal Thai Embassy. In late March 2020, several media sources showed pictures of long queues of returning Thais waiting in distress for health certificate approval outside the Royal Thai Embassy in London. These gatherings—an activity possibly exacerbating the spread of Covid-19—undermined the efforts by other governments to limit the spread of the virus. According to Section 39 of the Thai Constitution, Thai *citizens* are entitled to return to their motherland. In addition to our challenge to the necessity of such requirement, the government, we further contend, has an obligation to facilitate the exercise of this right (e.g., by providing free Covid-19 preventive kits to all passengers and arranging urgent repatriation flights) rather than let its citizens bear the costs and burdens incurred. Regrettably, despite flamboyant complaints, there was no official attempt to supersede the fit-to-fly rule with a more effective yet less burdensome requirement. The government was also very slow in arranging repatriation flights, thus leaving many Thais, already frustrated by the fit-to-fly requirement, stranded overseas. By doing this, it also placed responsibility on other countries to look after its citizens, in particular, if they became ill.

Secondly, the impact of a curfew and other lockdown measures was not merely circumscribed to the closure of highly crowded places. They also precipitated economic fallout and job losses. To relieve public hardship, Prayuth announced a monthly THB 5,000 subsidy payment (USD 154) to cover 3 million nationals. Due to immense social pressure, the relief package was extended to cover 16 million Thais. However, the online registration day was plagued with chaos as more than 28 million individuals lodged their applications. It appeared that many eligible applicants, especially those not included in social security programs such as taxi drivers and freelancers, were turned down by the minister of finance's artificial intelligence screening process, for no apparent reason. Meanwhile, unemployed people, construction labourers, and other informal workers, such as sex workers and hawkers, were automatically excluded. As a result, on 14 and 20 April 2020, large crowds, comprising taxi drivers, hawkers, garbage collectors, and freelancers, stormed into the Ministry of Finance, demanding the subsidy. On 27 April, a fifty-nine-year-old lady failing to secure the THB 5,000 aid attempted suicide in front of the Ministry by gulping down a pill. In fact, in the first three weeks after the state of emergency was declared, the total number of suicide attempts in Thailand precipitated by job losses became the highest in Southeast Asia, with the total number of thirty-eight cases and

<sup>18</sup> “Fit-to-fly.”

twenty-eight deaths.<sup>19</sup> However, the government merely acknowledged that suicide is a tragedy while failing to initiate a more effective and universal stimulus package to relieve the economic fallout engendered by the state of emergency.

Lastly, two instances in April 2020 further cast doubt on the ineffectiveness of the 2005 Decree in addressing socio-economic grievances. Job losses from the lockdown policy led to increasing homeless and rising poverty. However, rather than expressing leniency, the police arrested and prosecuted several vagrants for violating a curfew.<sup>20</sup> Besides, dozens of destitute residents had no choice but to queue for food donations in many provinces. Reports indicated that several philanthropists were warned by the police that their method of donation flouted Regulation No. 1, which prohibited social gatherings and required a firm observance of mask-wearing and social distancing.<sup>21</sup> Some donors in Bangkok were arrested and even prosecuted for failing to observe these rules.<sup>22</sup> These incidents indicate that the enforcement of the 2005 Decree aggravated, rather than mitigated, grievances. The official police response to the organizers of the Lumpini boxing bout on 6 March, which hastened transmission, and the massive face-mask hoarding scandal, exacerbates these concerns. The army chief is the manager of the Lumpini boxing stadium, and the status of any investigation has not been made public. Meanwhile, the hoarding scandal, as briefly mentioned, involved some ruling-government politicians. Yet, rather than scrutinizing and implicating those politicians or applying the 2005 Decree to arrest the conspirators, the police “hunted down” the Facebook whistle-blower whom they alleged, in mid-April, to have committed a computer crime in early April.<sup>23</sup>

## 5. Conclusion: From Emergency Response to Social Turbulence

The Prayuth government’s authoritarian-oriented response to Covid-19, we conclude, rested upon the fusion between two political ideologies: paternalism and nationalism. According to the perspective of “paternalistic nationalism,” the Thai polity is portrayed as a stratified society just as a patriarchal family, in which

<sup>19</sup> Chanatip Chailek, “The number of deaths and recorded suicides resulting from COVID-19: The two imbalance ‘real-life’ graphs,” *The Standard*, 25 April 2020, <https://thestandard.co/suicides-and-coronavirus-casualties/>.

<sup>20</sup> “Vagrant in Chiang Mai arrested and prosecuted for violating curfew,” *Khaosod*, 22 April 2020, [https://www.khaosod.co.th/covid-19/news\\_3994471](https://www.khaosod.co.th/covid-19/news_3994471).

<sup>21</sup> “Prosecuting a lady launching a food donation campaign for violating the Emergency Decree,” *Komchadluek*, 21 April 2020, <https://www.komchadluek.net/news/crime/428117>.

<sup>22</sup> “Prosecuting a lady”

<sup>23</sup> “Police insist on quizzing face mask whistleblower,” *Bangkok Post*, 11 April 2020, <https://www.bangkokpost.com/thailand/general/1897500/police-insist-on-quizzing-face-mask-whistleblower>.

the ruler plays the role of a benevolent father who leads the people qua his children in the right direction.<sup>24</sup> Accordingly, individual rights and liberties must give way to the security of the nation, while non-conformists are stigmatized as public enemies and are supposed to be suppressed. This strategy has been used by Prayuth to repress his opposition, especially supporters of former Prime Minister Thaksin Shinawatra and other pro-liberal movements. However, in the case of Covid-19, resorting to paternalistic nationalism turned out to be problematic. Notwithstanding the availability of legal measures under the 2005 Act that were more suitable for tackling the endemic, Prayuth claimed a lack of coordination on the part of provincial government to justify invoking the more paternalistic-nationalist 2005 Decree. But derogating from the rule of law did not guarantee the successful prevention and mitigation of Covid-19. In fact, some measures authorized by Regulations Nos. 1 and 2 under the 2005 Decree even counterproductively generated socio-economic unrest, thus reinforcing anti-junta sentiments, which could possibly spark another round of political crisis. A challenging question that remains: Should Thais be forced to accept Covid-19 casualties resulting from an inadequate government, with its resort to an authoritarian-oriented approach to saving lives, protecting of their rights, and managing socio-economic turbulence? For us, the answer is absolutely negative. The Taiwanese experience reveals that liberal democratic norms can co-exist with an effective Covid-19 response, and while helping to avoid the most serious economic consequences. In anticipation of any subsequent wave of the coronavirus, the 2015 Act, we suggest, should be swiftly amended to fix its defects.

<sup>24</sup> Thak Chaloemtiarana, *Thailand: The Politics of Despotism* (New York: SEAP, 2007).

# India: Federalism, Majoritarian Nationalism, and the Vulnerable and Marginalized

*Reeta Chowdhari Tremblay\* and Namitha George\*\**

## 1. Introduction

India has a long and tarnished history of reaching for emergency powers, which stretches back to the colonial period,<sup>1</sup> in times of political crisis. Although India did not declare a formal constitutional emergency after its first reported case of Covid-19 on 30 January 2020, within just under eight weeks, India went from “no health emergency” (according to the Ministry of Health and Welfare) to a country-wide twenty-one-day lockdown on 25 March. This lockdown has been extended twice, each time for two weeks—14 April to 3 May and then 4 May to 17 May. Despite a daily record jump in the number of deaths and cases each day since mid-March (from 84 confirmed cases and 2 deaths on 14 March to 62,939 confirmed cases and 2,109 deaths on 10 May), India’s Ministry of Health, Family, and Welfare (MoHFW) has consistently maintained a narrative that the growth rate of the Covid-19 cases in India has remained linear and not exponential; that its strict twenty-one-day lockdown, whose objective was preventive, has successfully slowed the spread of the virus; that India is “on the path of success and will win the war against the pandemic”;<sup>2</sup> and that the two extensions of the lockdown should be considered an exit strategy.<sup>3</sup> After setting out a brief history of Covid-19 in India and the government’s response, this chapter discusses the policy instruments invoked to respond to the pandemic and examines some of

\* Professor of Comparative Politics, University of Victoria.

\*\* PhD student, Department of Political Science, University of Victoria.

<sup>1</sup> Chua and Lee, Chapter 8, this volume.

<sup>2</sup> Press Trust India, “We are on the path of success’: Health Minister on fight against Covid-19,” *The Hindu*, 4 May 2020, <https://www.thehindubusinessline.com/news/we-are-on-the-path-of-success-union-health-minister-on-fight-against-covid-19/article31495010.ece>.

<sup>3</sup> “Exit 2.0, Not Lockdown 3.0’: Health Ministry’s Spin on Restrictions,” *NDTV*, 4 May 2020, <https://www.ndtv.com/india-news/health-ministrys-spin-on-restrictions-exit-2-0-not-lockdown-3-0-2223203>.

the challenges and consequences resulting from them: the federal jurisdictional management of a pandemic, particularly in the treatment of informal migrant workers; and the reinforcement of Prime Minister Narendra Modi's populism and Hindutva majoritarian nationalism.

## 2. Tracing Covid-19: India, Lockdowns, and the Data

The first three confirmed cases of novel coronavirus were from the state of Kerala at the southwestern tip of India. The first case was reported in the Thrissur district when a student studying in Wuhan, China (the epicentre of the pandemic<sup>4</sup>) who had returned home tested positive of the coronavirus. All three Covid-19 patients were released from the hospital by 20 February.

This scenario was to radically shift by 9 March when forty-four new cases were reported from ten States and Union Territories (S/UT). Prime Minister Modi and the MoHFW's responses were both incremental and reactive. Using #IndiaFightsCorona, Modi asked people to avoid large gatherings ahead of the 10 March *Holi* function, a major North Indian spring festival. By 15 March, the number of confirmed cases had risen to 110. The MoHFW continued to insist that there was no evidence of community transmission "as yet." Consistent with this narrative, four days later, in his address to the nation, Modi, warning against complacency and encouraging social distancing, asked all Indian citizens to observe on 22 March a one-day self-imposed *Janata* (People) curfew, likening it to a bomb drill.

The MoHFW's official position at this juncture was that "one day's cooperation will help break the chain of transmission."<sup>5</sup> Major social media platforms, such as WhatsApp, were used to push further the Ministry's view that this was a single-day exercise and that Modi's call for a one-day curfew would be enough to defeat the virus. Accordingly, the government's position continued to be that all India's efforts were aimed at prevention as there had been no community transmission of Covid-19 but only local transmission (implying that India was able to trace sources of infections) in the country<sup>6</sup> and that therefore "all individuals need not be screened."<sup>7</sup> In response, Ramanan Laxminarayan, director of the Washington DC-based Center for Disease Dynamics, Economics & Policy queried: "If you

<sup>4</sup> Ramraj and Little, Chapter 1, this volume.

<sup>5</sup> "Sharp bump in corona tally warns of potential dangers," *The Hindustan Times*, 21 March 2020, <https://www.hindustantimes.com/india-news/sharp-bump-in-corona-tally-warns-of-potential-dangers/story-IsjvIMJWnJTdkKckLlw4jO.html>.

<sup>6</sup> The MoHFW defines "community transmission" as when Covid-19 spreads in the population in such a way that people don't know how they were exposed to the contagion.

<sup>7</sup> On that date, only 9,000 people had been tested despite at least 300,000 kits being available.

don't test, how would people know they (people) have the disease? If people don't know, then how will secondary infection be prevented?"<sup>8</sup>

On 22 March, with 370 cases and 7 deaths in two-thirds of S/UT, a limited lockdown was imposed on seventy-five districts (10 per cent of all Indian districts) with confirmed cases.<sup>9</sup> Meanwhile a large number of S/UT began to undertake steps, ranging from closing public places, including educational institutions, to imposing curfews and to shutting down their borders and restricting inter-state traffic. All the while, the national government continued to stick to the course of no "indiscriminate testing," and testing only those symptomatic cases with a travel history or those who had come in contact with positive cases.

On 24 March, Prime Minister Modi announced a nationwide lockdown for twenty-one days, starting at midnight on 25 March: "The next 21 days are crucial for us. If we are not able to manage a lockdown for 21 days, many families will be destroyed forever."<sup>10</sup> Except for essential services, everything was shut down, including all road, rail, and air transportation. On 28 March, additional measures prevented movement across cities or on highways during the lockdown. Given the low number of confirmed cases, India's twenty-one-day lockdown was identified as one of the most stringent in the world (see Table 1) according to the "Oxford COVID-19 Government Response Tracker."<sup>11</sup>

Meanwhile, on 31 March, Delhi's Nizamuddin area emerged as a hotspot of Covid-19, with 37 people infected and 27 testing positive at the headquarters of the Tablighi Jamaat. Some 2,000 people, including 250 foreigners, had attended a religious (Muslim) gathering at the Jamaat from 1 March to 15 March. Some had stayed on in the residence of the Jamaat's six-floor dormitory, while others had moved to their respective homes in other states of India. While this gathering no doubt caused a spike in the number of reported cases of Covid-19, it also dramatically "communalized" the Indian pandemic discourse.<sup>12</sup>

The twenty-one-day lockdown was extended for four more weeks in two stages—Lockdown 2.0 and Lockdown 3.0—with certain relaxations to help kick-start the economy. The focus was to shift from just saving lives to saving both

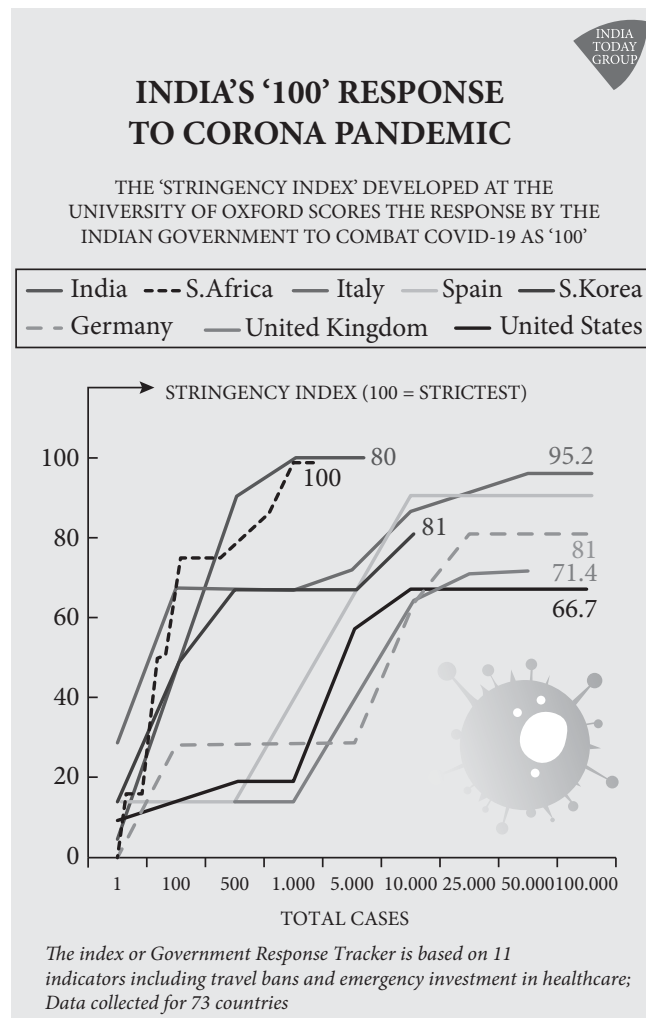
<sup>8</sup> "Tackling coronavirus: Why India may be failing the test," *The Hindustan Times*, 17 March 2020, <https://www.hindustantimes.com/india-news/tackling-coronavirus-why-india-may-be-failing-the-covid-19-test/story-Sp1ayFyCsjwt0cUFLXi86M.html>.

<sup>9</sup> There are 730 districts in India. A district is an administrative division of a state or a union territory.

<sup>10</sup> "Coronavirus: No need to panic, Modi says after announcing 21-day lockdown," *Scroll In*, 24 March 2020, <https://scroll.in/latest/957046/coronavirus-shaheen-bagh-protest-site-cleared-amid-delhi-lockdown-india-records-471-cases>.

<sup>11</sup> See "India scores high on Covid-19 response tracker made by Oxford University," *India Today*, 10 April 2020, <https://www.indiatoday.in/india/story/india-scores-high-on-covid-19-response-tracker-made-by-oxford-university-1665573-2020-04-10>.

<sup>12</sup> The word "communalization" or "communalizing" is used within the South Asian context as denoting sharp polarization between the religious communities.

Table 1 India's "100" response to corona pandemic<sup>a</sup>

<sup>a</sup> "India scores high on Covid-19 response tracker made by Oxford University," *India Today*, 10 April 2020, <https://www.indiatoday.in/india/story/india-scores-high-on-covid-19-response-tracker-made-by-oxford-university-1665573-2020-04-10>.

lives and livelihoods. Exemptions were to be made for agriculture (allowing the harvesting of crops and procurement of produce), manufacturing, and cargo transportation. However, all air and railway traffic, educational institutions, places of worship, cinema halls, malls, and the hospitality sector continued to be closed. In the case of funerals, gatherings of fewer than twenty people were permitted. To contain the spread, the country was divided into three zones according to the severity of the outbreak: red for the 130 most severely affected districts, the hotspots; orange for 284 districts with a limited number of cases in the past and with no surge; and green for 319 districts with no reported cases. Lockdown 3.0 was extended on 3 May for another two weeks with India reporting 40,263 confirmed cases and 1,306 deaths. The MoHFW issued new

guidelines to regulate different activities. These regulations eased restrictions in orange zones and opened up all activities except those prohibited nationwide in green zones. For all zones, however, all air, local, and inter-state train and inter-state bus travel continued to be disallowed as well as the inter-state movement of people in general; all educational institutions, the hospitality sector and recreational activities remained shut; and no religious gatherings were permitted.

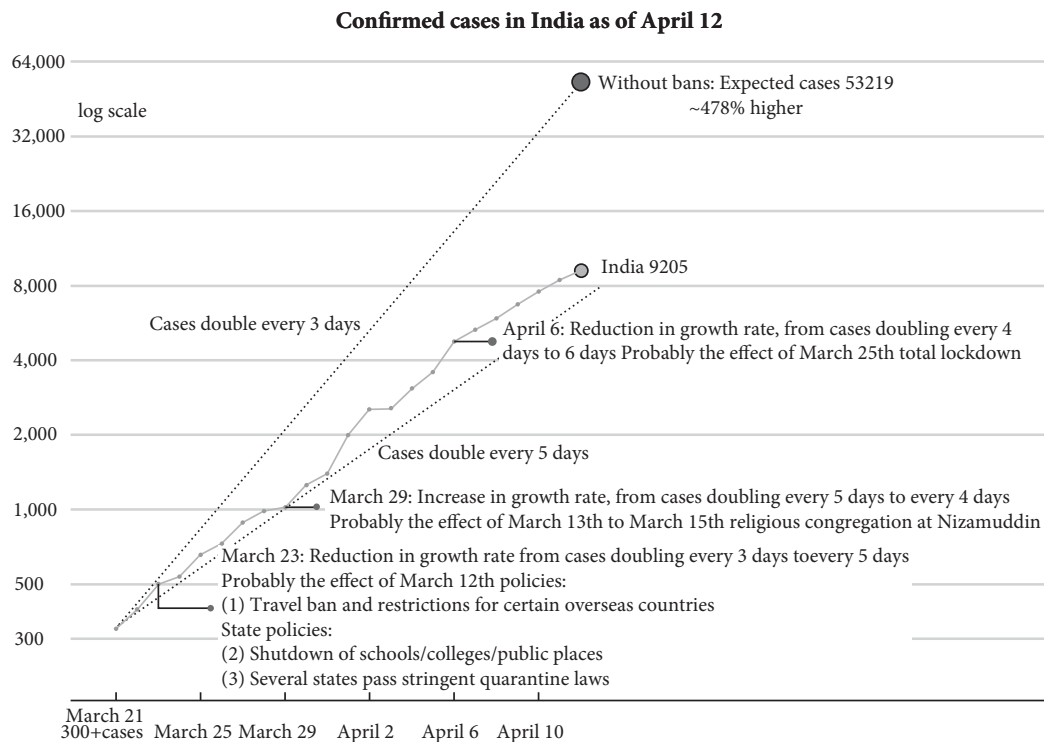
On 12 May, Prime Minister Modi announced a forthcoming fourth phase of the lockdown (Lockdown 4.0), which “will be based on feedback received from all Chief Ministers” of S/UT. He announced as well an economic stimulus package of USD 260 billion (10 per cent of India’s GDP), focusing on “land, labour and other crucial factors. It is for MSME (Micro, Small and Medium Enterprises), agriculture and other sectors that employ millions. It is for those farmers, labourers and middle-class that pays tax and contribute to India’s growth.”<sup>13</sup>

India congratulated itself for averting a disaster given its huge and dense population with social norms promoting close contact, for slowing down widespread community transmission, and for the success of its strict three-week lockdowns in flattening the curve. On 23 April, the Environment Secretary C.K. Mishra in a daily media briefing stated, “During the 30 days of lockdown, we have been able to cut transmission, minimize spread and increase the doubling days of COVID-19. We have been able to consistently ramp up our testing and utilize our time preparing for the future in case the virus spreads further. The growth of COVID-19 cases has been more or less linear, not exponential; this indicates that the strategies we adopted have succeeded in containing the infection to a particular level. Post-imposition of lockdown, while the number of new positive cases has increased by 16 times, testing increased by 24 times.”<sup>14</sup> The Indian government also supported its claim with a Brookings Institute study showing that without the lockdown, the expected cases of Covid-19 would have been 478 per cent higher as of 12 April, amounting to 53,299 cases, as opposed to the actual 9,205, as there had been a reduction in the growth rate in cases from a doubling every four days to a doubling every six days (see Table 2). Even with almost 63,000 confirmed cases in May, the government’s narrative has remained consistent: no community transmission.

<sup>13</sup> See “Lockdown 4.0 in new form, with new rules: PM Narendra Modi,” *The Times of India*, 13 May 2020, <https://timesofindia.indiatimes.com/india/lockdown-4-0-in-new-form-with-new-rules-pm/articleshow/75705911.cms>; “PM Modi Speech Highlights: Lockdown 4.0, Rs 20 lakh crore package and more,” *Business Today*, 12 May 2020, <https://www.businesstoday.in/current/economy-politics/pm-modi-speech-highlights-lockdown-40-rs-20-lakh-crore-package-and-more/story/403631.html>.

<sup>14</sup> “Covid-19 infection rate in India has slowed down to flatten the curve: Centre,” *India Today*, 24 April 2020, <https://www.indiatoday.in/india/story/covid-19-infection-rate-india-slowed-down-flatten-the-curve-centre-1670359-2020-04-24>.



Table 2 Confirmed cases in India as of April 12<sup>a</sup>

<sup>a</sup> Sandhya Ramesh, “India’s Covid deaths rise steadily but infection rate fluctuates in states: Data experts,” *The Print*, 22 April 2020, <https://theprint.in/india/indias-covid-deaths-rise-steadily-but-infection-rate-fluctuates-in-states-data-experts/405917/>.

However, in certain quarters, there has been hesitancy to accept the government’s optimistic account. In response to Modi’s ruling Bharatiya Janata Party’s (BJP) tweet claiming “full marks” in implementing an effective lockdown using the *Stringency Index* infographic, those who prepared the index swiftly tweeted back saying that their data should not be interpreted as a measure of either the “appropriateness or effectiveness of a country’s response.”<sup>15</sup> There also exists skepticism among some health researchers regarding India’s low detection rates due to limited testing availability and screening capacity.<sup>16</sup> Only a fraction of the country’s 1.3 billion citizens have been tested.<sup>17</sup> Early on, under the

<sup>15</sup> See Akash Sriram, “COVID-19: BJP claims ‘full marks’ for govt response,” *Deccan Herald*, 13 April 2020, <https://www.deccanherald.com/national/covid-19-bjp-claims-full-marks-for-govt-response-university-of-oxford-slams-claim-824820.html>.

<sup>16</sup> Some prominent skeptics include Ramanan Laxminarayan, director of the Washington, DC-based Center for Disease Dynamics, Economics & Policy, and Gagandeep Kang, director of Translational Health Science and Technology Institute, Faridabad, India.

<sup>17</sup> Jacob Koshy points out that between 4 February and 21 March, India’s testing rates were the slowest compared to other countries such as South Korea, Taiwan, the United States, and the United Kingdom. See Jacob Koshy, “Coronavirus | Why are only a fraction of cases tested?,” *The Hindu*, 22

direction of the Indian Council of Medical Research (ICMR, the Government of India's nodal research centre for coordinating diagnostics for Covid-19), India had conducted tests on people returning from international travel or who had come in contact with people who had tested positive. This concern about limited testing seemed to persist despite the ICMR revising its policy, which at first on 20 March had extended testing to only hospitalized patients with pneumonia-like symptoms but later on 9 April decided to test all influenza-like illness asymptomatic cases and, after seven days of illness, to conduct antibody tests. Still India's testing numbers have remained very low relative to its population. Indeed, as most of India's initial testing had remained focused on the Nizamuddin cluster, it failed to capture the real numbers of infected population.

Others suggest that India could be under-reporting cases, due to the large number of unrecorded deaths (around 80 per cent) occurring at home rather than in the hospitals. Prabhat Jha, director of the Centre for Global Health Research and professor of epidemiology at the University of Toronto suggests that to get an accurate picture of Covid-19-related fatalities, "missing deaths have to be considered."<sup>18</sup> Added to this mix is the government's almost total control of the public narrative about the Covid-19 status in India. The mistrust in data is very much a product of the government's lack of transparency. During the lockdown period, the Modi government went to India's Supreme Court to ask for its intervention to ensure that the media publish or telecast data relating to Covid-19 only after government verification, as "any deliberate or inaccurate" or "fake and misleading" messages on social media" could have a "serious and inevitable potential of causing panic in a larger section of the society."<sup>19</sup> In its 31 March decision, while claiming to uphold the right to free discussion about Covid-19, the Supreme Court nevertheless directed the media to refer to and publish the official version of the developments to avoid inaccuracies and large-scale panic.

### 3. Policy Instruments: Federal Jurisdictional Conflicts and Populist Politics

India's federal constitution assigns the responsibility of public health to the states. Over the years, India has made several unsuccessful attempts to create an

March 2020, <https://www.thehindu.com/sci-tech/health/coronavirus-why-are-only-a-fraction-of-cases-tested/article31131360.ece>.

<sup>18</sup> Soutik Biswas, "India coronavirus: The 'mystery' of low Covid-19 death rates," *BBC News*, 28 April 2020, <https://www.bbc.com/news/world-asia-india-52435463>.

<sup>19</sup> Krishnadas Rajagopal, "Coronavirus | Supreme Court upholds right to discuss COVID-19," 31 March 2020, <https://www.thehindu.com/news/national/coronavirus-supreme-court-upholds-right-to-discuss-covid-19/article31218565.ece>.

integrated National Public Health legal framework.<sup>20</sup> In the absence of such an integrated legal framework, India has had to rely on two policy instruments: the outdated colonial *Epidemic Act 1897*, enacted to manage the epidemic of bubonic plague in Bombay,<sup>21</sup> and the *Disaster Management Act* (DMA), a legal instrument developed after the 1999 Orissa cyclone, the 2001 Bhuj Gujrat earthquake, and the 2004 Indian Ocean Tsunami.

The *Epidemic Act of 1897*, while empowering both states and the central government to regulate the handling of an epidemic, fundamentally devolves responsibility for implementing these measures to state authorities. Section 2 of the act reads: “When the state government is satisfied that the state or any part thereof is visited by or threatened with an outbreak of any dangerous epidemic disease; and if it thinks that the ordinary provisions of the law are insufficient for the purpose, then the state may take, or require or empower any person to take some measures and by public notice prescribe such temporary regulations to be observed by the public. The state government may prescribe regulations for inspection of persons travelling by railway or otherwise, and the segregation, in hospital.”<sup>22</sup> Section 2A defines the central government’s responsibilities much more narrowly, limiting them to the “inspection of any ship or vessel leaving or arriving at any port and for detention thereof, or of any person intending to sail therein, or arriving thereby.”<sup>23</sup> In accordance with this 123-year-old act, almost all state governments have legislated their own Epidemic Acts (the oldest two are the *Madras Public Health Act 1939* and the *Malabar Public Health Act of 1939*), although the content of these acts and regulations is not consistent across jurisdictions. In response to local Covid-19 cases, some states, such as West Bengal, Maharashtra, and Delhi, used their authority under the Epidemic Act to enact new laws to enhance their powers.<sup>24</sup>

The DMA deals with three aspects of disaster responses simultaneously: preparedness, prevention, and planning. It vests the authority in a National Disaster Management Authority (NDMA) chaired by the prime minister of India.

<sup>20</sup> Several failed attempts which did not receive approval by the state governments include: 1955 and then 1987a *Model Public Health Act*, 2009 *National Health Bill*, 2015 Draft National Health Policy, and the draft 2017 *Prevention, Control and Management of Epidemics, Bio-Terrorism and Disasters Bill* yet to be tabled in Parliament.

<sup>21</sup> See, on colonial origins of policy instruments, Chua and Lee, Chapter 8, this volume.

<sup>22</sup> P.S. Rakesh, “The Epidemic Diseases Act of 1897: Public Health Relevance in the Current Scenario,” *Indian Journal of Medical Ethics* 1, no. 3 (July–September 2016): 156.

<sup>23</sup> Binod K. Patro, Jaya Prasad Tripathy, and Rashmi Kashyap, “Epidemic diseases act 1897, India: Whether sufficient to address the current challenges?,” *Journal of Mahatma Gandhi Institute of Medical Sciences* 18, no. 2 (2013), <http://www.jmgims.co.in/article.asp?issn=0971-9903;year=2013;volume=18;issue=2;spage=109;epage=111;aulast=Patro>.

<sup>24</sup> On 12 March 2020, Delhi’s governor issued a notification regarding its new regulations, “The Delhi Epidemic Diseases, COVID-19”; on 13 March, Maharashtra issued “Maharashtra Regulations for Prevention and Containment of Coronavirus Disease”; on 16 March, the West Bengal legislated “West Bengal Epidemic Disease, COVID 19 Regulations.”

Although the act provides for the creation of state and district-level disaster management committees, the central government is the nodal body laying down “all the plans and policies assisted by the secretaries of various ministries and department heads.”<sup>25</sup> Section 6 of the act confers on the NDMA “the responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster . . . [and to] take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary.”<sup>26</sup> The act also spells out responsibilities and duties down to the district level, making it a “top-down model of disaster management.”<sup>27</sup>

Until the first lockdown when the central government invoked the DMA, both levels of government had followed the Epidemic Acts. Accordingly, the national government issued travel advisories, controlled the air and port traffic, and instituted surveillance and quarantine systems. The S/UT proactively responded to the pandemic crisis in their jurisdictions. At the national level, the Prime Minister’s Office and MoHFW took charge of monitoring the Covid-19 situation and intensifying preparedness and response efforts, which included: entry screening for symptoms of fever and cough for travellers coming from China at twenty-one airports of India (extended on 13 February to passengers coming from Hong Kong, Japan, Korea, Singapore, and Thailand; on 22 February to arrivals from Iran, Italy, the Republic of Korea, Indonesia, Kathmandu, Malaysia, and Vietnam; and on 18 March to passengers from all European Union countries, Turkey, and the United Kingdom); a possible quarantine for fourteen days of the people coming from these countries or having a related travel history; issuing travel advisories for non-essential travel; and requiring the National Institute of Virology, Pune (the country’s premier Virology Research Institute) and twelve other labs in major cities to test samples. In addition, on 26 and 27 February, the Indian government evacuated 124 people quarantined on the *Diamond Princess* cruise ship in Japan. As no new cases had been detected and Covid-19 was perceived to be only “travel-related,” these measures were considered sufficient.

Kerala set in motion its integrated public health emergency system of sophisticated surveillance and detection capabilities in order to contain the outbreak. In mid-March, as the pandemic reached their territories, the north-eastern

<sup>25</sup> Subhradipta Sarkar and Archana Sarma, “Disaster Management Act, 2005: A Disaster in Waiting?,” *Economic and Political Weekly* 41, no. 35 (2–8 September 2006): 3761.

<sup>26</sup> Manish Tiwari, “India’s Fight against Health Emergencies: In Search of a Legal Architecture,” *ORF Issue Brief*, *Observer Research Foundation* no. 349 (March 2020), <https://www.orfonline.org/research/indias-fight-against-health-emergencies-in-search-of-a-legal-architecture-63884/?amp>.

<sup>27</sup> Rajendra Kumar Pandey, “Legal Framework of disaster Management in India,” *ILI Law Review* (Winter 2016): 180.

states began to shut down their borders to both domestic and foreign tourists and closed all educational institutions and public spaces. The Delhi government banned gatherings of more than fifty people and closed all recreational facilities and educational institutions. Jammu and Kashmir banned gatherings of five or more persons and suspended foreign tourism and inter-state bus service. By 20 March, several states had imposed prohibitory orders to deal with the pandemic, including lockdowns. Moreover, states began to ask Indian Railways, which is under federal jurisdiction, to prevent trains from entering their territories. The West Bengal government requested a complete ban on trains from outside states entering Bengal from midnight on 22 March until 31 March.

On 24 March, in a nationwide address and without any prior consultation with the S/UT, Modi announced a lockdown of the country for three weeks, giving residents—and state governments—just four hours' notice. Through the DMA and the imposition of the twenty-one-day lockdown, the central government took over the powers of the states in healthcare and the handling of the pandemic. A top-down taskforce was set up with a central bureaucracy, reporting directly to the prime minister as chair of the NDMA. The prime minister also established eleven empowered groups, comprised of fifteen union ministers, for the purposes of planning and ensuring quick implementation of decisions. State officials, who generally take their instructions from the state governments, were to report directly to the central bureaucracy in all matters relating to Covid-19. Each state was obligated to file daily reports to the NDMA via the MoHFW. India's Home Ministry, in a memo to all central government bureaucrats, gave the rationale of creating uniformity: "While steps taken by the States/UT are in the right direction, lack of uniformity in the measures adopted as well as in their implementation, may not serve the objective of containing the spread of the virus."<sup>28</sup>

#### 4. Centralizing Federalism

The imposition of the DMA has resulted in the further centralization of Indian federalism. While pushing uniformity, it ignores the distinct complexities of each Indian state and over-rides the constitutionally guaranteed fundamental rights of the citizens of India. One of the major unintended consequences of this imposition of uniformity has been the plight of the invisible, marginalized, informal workers and migrants who found themselves in the midst of intergovernmental jurisdictional battles. Increasing centralization has been further strengthened by

<sup>28</sup> Home Secretary Ajay Bhalla's memo, DO No. 40/3/2020-DM-1(A), to all secretaries of ministries/departments of the government of India, dated 24 March 2020.

Modi's usage of populism as a strategy to mobilize mass support for the national government's Covid-19-related policies.

To mitigate the vocal opposition of some chief ministers (particularly of the non-BJP-led governments) to the unilateral imposition of the lockdown, Prime Minister Modi began to hold regular video conference meetings with the S/UT leadership. Interestingly, only a limited number of pre-selected chief ministers were allowed to speak, generally those who belonged to the ruling BJP party; in this way, Modi effectively manufactured consent. Some of the vocal opponents of the central government, like the chief minister of West Bengal, were publically labelled as non-cooperative.

Another example of the central government's push toward uniformity and standardization<sup>29</sup> is the mandatory use of the Covid-19 tracking app *Aarogya Setu* (a bridge to health), launched on 2 April, by all government employees and private companies and by all individuals in the red (containment) zone. The general public was encouraged to download the app, and within one month, 90 million had done so. The *Aarogya Setu* app calculates personal data based on a person's interaction with others and enables people to assess the risk of their catching Covid-19 using Bluetooth technology, algorithms, and artificial intelligence. Privacy and individual rights concerns have been raised, which the government has dismissed. New Delhi-based Internet Freedom Foundation suggests that "the disclosed purpose for the app is vague enough for the government to repurpose it or expand its scope."<sup>30</sup> The accessibility of such a vast quantity of personal data in the hands of the government has prompted one of India's well-known opposition leaders Shashi Tharoor to point out that "there are genuine concerns that the *Aarogya Setu* app will play into the unfolding narrative of greater government control."<sup>31</sup>

## 5. The "Invisible" Marginalized and the Vulnerable

The hardest hit casualties of India's lockdown have been informal workers and migrants. According to the 2011 census, 139 million migrants account for inter- and intra-state movement. Mostly from Uttar Pradesh and Bihar, they

<sup>29</sup> See Amartya Lahiri, "Indian states can absorb diverse Covid response models, but Modi govt using one size for all," *The Print*, 6 May 2020, <https://www.msn.com/en-in/news/other/indian-states-can-absorb-diverse-covid-response-models-but-modi-govt-using-one-size-for-all/ar-BB13FCx9>.

<sup>30</sup> Venkat Ananth, "Aarogya Setu's not all that healthy for a person's privacy," *The Economic Times*, 15 April 2020, [https://economictimes.indiatimes.com/tech/software/aarogya-setus-not-all-that-healthy-for-a-persons-privacy/articleshow/75112687.cms?from=story\\_slider&slide=1](https://economictimes.indiatimes.com/tech/software/aarogya-setus-not-all-that-healthy-for-a-persons-privacy/articleshow/75112687.cms?from=story_slider&slide=1).

<sup>31</sup> Sanu V. George, "Aarogya Setu will play into an unfolding narrative of greater governmental control: Shashi Tharoor," *The Plural Column*, 8 May 2020, <https://thepluralcolumn.com/2020/05/aarogya-setu-will-play-into-an-unfolding-narrative-of-greater-governmental-control-shashi-tharoor/>.

live and work in Delhi, Maharashtra, Tamil Nadu, Gujarat, Andhra Pradesh, and Kerala. In the announcement of the lockdown and the shutting down of all railways and road transportation, the Modi government had not considered the plight of the daily wage migrant population. Moreover, the S/UT had not been consulted about the lockdown, and the states had not worked out the specifics of how to feed these vulnerable sections of their population. Thousands of migrant labourers, with no access to food, money, or accommodation, decided to walk for hundreds of kilometres to reach their homes. Their common response was “I would rather die of the pandemic than die of hunger.”<sup>32</sup> During their journey, they were often met with beatings by the police who were enforcing the central government’s order of “no movement of the people.”<sup>33</sup> Some of those who managed to return home were sprayed by local health officials with disinfectants.<sup>34</sup>

Along with the virtual silence of the central government on the plight of the migrant workers, there was a haphazard response from the S/UT. The Delhi government announced that the government would use 224 shelters across the capital and 325 government schools to feed at least 400,000 people. The Uttar Pradesh government sent 1,000 buses to Delhi to ferry the workers back home. This created further chaos. Thousands of migrants subsequently gathered at inter-state bus terminals in Delhi, risking the transmission of infection. Finally, on 29 March (five days into the lockdown), the Modi government issued a three-fold directive: no people could move across cities or on highways during the twenty-one-day Covid-19 lockdown, and those found in violation of the lockdown conditions would have to spend a minimum of fourteen days in quarantine; the S/UT could use the State Disaster Relief Fund to provide relief to the migrant labourers so that fewer would feel compelled to leave; and the S/UT should ensure timely payment of wages to labourers at their place of work during the period of lockdown without any cuts. However, Modi, in his monthly *Mann Ki Baat* radio address to the nation, while apologizing “for taking these harsh steps that have caused difficulties in your lives, especially the poor people,” never once mentioned the plight of migrant labourers. The financial package announced by Finance Minister Nirmala Sitharaman on 26 March did not contain any provision for informal and migrant workers, offloading all responsibilities to the S/UT. After the end of the second lockdown, a limited number of buses

<sup>32</sup> The Citizen Bureau, “The Plight of Migrants Remains the Foremost Casualty of India’s Covid-19 Response,” *The Citizen*, 8 May 2020, <https://www.thecitizen.in/index.php/en/NewsDetail/index/9/18713/-The-Plight-of-Migrants-Remains-the-Foremost-Casualty-of-Indias-Covid-19-Response>.

<sup>33</sup> Moushumi Das Gupta and Himani Chandna, “Seal borders, put lockdown violators in 14-day quarantine, Modi govt tells states,” *The Print*, 29 March 2020, <https://theprint.in/india/governance/seal-borders-put-lockdown-violators-in-14-day-quarantine-modi-govt-tells-states/390810/>.

<sup>34</sup> Alok Pandey, “Bleach Sprayed on Migrants in UP over COVID-19, Kerala Uses Soap Water,” *NDTV*, 30 March 2020, <https://www.ndtv.com/india-news/coronavirus-india-lockdown-disinfectant-sprayed-on-migrants-on-return-to-up-shows-shocking-video-2202916>.

and trains were allowed to transport the migrant labourers and their families to their respective homes, causing huge crowds at bus stops and railway stations. As workers had to pay the transportation costs, those who could not afford them were left behind. Others were prevented from travelling because they did not have their *Aadhar* card (a unique one-time government-issued identity card that is assigned to all Indian residents). The government's desultory and negligent treatment of migrant labourers has been shamefully inhumane.

## 6. Populism and Majoritarian Nationalism in One Package

Covid-19 has given an excellent opportunity to Modi and his ruling Hindu nationalist party, the BJP, to consolidate an ethnic majoritarianism that, while promoting populist politics, erases differences, dissent, and the rights of minorities. Since winning an overwhelming majority in the national Parliament in 2019, the BJP has been silencing its critics by invoking a populist rhetoric of protecting India against both internal (read Muslim minority) and external security threats. Two of its prominent actions in 2019 were the clampdown on the Muslim-majority Kashmir Valley and the passage of the *Citizenship Amendment Act*, which created a significant risk of Muslims seeing their citizenship being revoked. With the 1 April revelation that Delhi's Nizamuddin had emerged as a virus hotspot, the Tablighi Jamaat was targeted as responsible for spreading the virus in India. The virus came to be referred to by the Hindu-nationalist groups and several members of the BJP as "Corona jihad" or "Islamic insurrection" or a "Talibani crime." The Muslim community (a minority population of 200 million in India) were targeted in Islamophobic attacks on the streets and online with hashtags on social media such as #CoronaJihad, #CrushTablighiSpitters, and #BioJihad. Raj Thackeray, the leader of a far-right nationalist party, even suggested that Tablighi Jamaat members "be killed by firing bullets."<sup>35</sup> One newspaper went so far as to publish a cartoon depicting the coronavirus as a terrorist in Muslim attire. The constant and repeated "othering" of Muslims was even reinforced by the MoHFW when, during its regular public briefings, its spokesperson Agarwal repetitively provided the numbers related to the Tablighi Jamaat incident, creating the impression that the Nizamuddin cluster was the only cluster of infections (despite these accounting for only 30 per cent of the total cases). The government of India also required the states to scrupulously trace every member

<sup>35</sup> Press Trust of India, "'Unruly' Tablighis be killed with bullets: MNS chief Raj Thackeray," *Deccan Herald*, 4 April 2020, <https://www.deccanherald.com/national/west/unruly-tablighis-be-killed-with-bullets-mns-chief-raj-thackeray-821270.html>.



of the Tablighi Jamaat and their contacts to stop the disease from spreading any faster than it already had.

Without making the slightest attempt to push back against the blame-the-Muslims narrative, Modi, through the prominent use of Hindu idioms and mythology, further reinforced the idea of India as a Hindu nation. In announcing the three-week lockdown, he used the term *Lakshman rekha*, from the Hindu epic Ramayana. In the epic, Sita, the wife of Lord Ram, was safe from her enemies behind a line drawn by her brother-in-law, Lakshman. Modi, making an analogy, told his audience: “you will invite a grave disease into your homes if you step out. From tonight, there has effectively been a ‘*Lakshman rekha*’ drawn in front of your door.” On the first day of the lockdown, addressing his constituency in Varanasi, Modi invoked another ancient epic, *Mahabharata* (the war between step-brothers: the good five Pandavas and the evil one hundred Kauravas). Winning the war against the coronavirus, he asserted, would take twenty-one days, slightly longer than the eighteen days required to win the epic war of the *Mahabharata*, adding that while the Hindu god Krishna had guided the Pandavas to victory, the nation was today being guided by its 1.3 billion citizens.

Modi, through his personalized and charismatic leadership, has emerged as the major enforcer of the government’s policy instruments. Claiming to speak on behalf of 1.3 billion Indian citizens, he has been able to mobilize the masses’ support for the Covid-19 lockdown. Millions of Indians have dutifully responded to his calls for staying indoors, or beating *thalis* (plates) at 17:00 on the day of the Janata curfew, or lighting *diyas* (candles—a reference to the Hindu function *Diwali*) on 5 April to show the “nation’s resolve and collective solidarity” in its fight against the coronavirus.<sup>36</sup> His rhetorical appeals to the people, full of mythical and religious references, have served to reinforce and strengthen the Hindutva ideology and majoritarian nationalism, while jeopardizing differences, dissent, and the rights of minorities.

## 7. Concluding Reflections

Covid-19 has effectively provided the Modi government with a singular opportunity to reinforce the authoritarian populist, majoritarian nationalism

<sup>36</sup> See “With clapping, bell ringing, India unites to thank coronavirus fighters,” *The Hindustan Times*, 22 March 2020, <https://www.hindustantimes.com/india-news/with-clapping-bell-ringing-india-unites-to-thank-coronavirus-fighters/story-c7WKBbWyJvLPfUjRUa4N2J.html>; “Millions of Indians respond to PM’s appeal; light candles, diyas, turn on mobile phone torches,” *The Economic Times*, 5 April 2020, <https://economictimes.indiatimes.com/news/politics-and-nation/millions-of-indians-respond-to-pms-appeal-light-candles-diyas-turn-on-mobile-phone-torches/articleshow/74997232.cms>.

and centralizing tendencies in India, thereby undermining India's democracy. Once the Covid-19 pandemic is over and things are somewhat back to normal, we will have to see whether the Indian democracy can revive its multicultural ethos, which the BJP government has been dismantling piece by piece. Related to that challenge might be another enquiry about the relationship between regime type and the successful handling of a worldwide crisis such as a pandemic. In India, a noteworthy example is the state of Kerala, where the first three cases of Coronavirus were reported.<sup>37</sup> Despite its porous borders, a large number of migrant workers, and a sizeable expatriate population, Kerala has been conspicuous in flattening the curve as compared to the rest of India. Many analysts suggest that Kerala, with its left-wing governance history, has always focused on social welfare. Moreover, with a 94 per cent literacy rate—the highest in India—and a vibrant local media, it has implemented a democratic governance model expecting substantive outcomes, which has resulted in strong public health policy planning and one of the best healthcare systems in India. Not surprisingly, its citizens exhibit a high level of trust in their government. Does Kerala's example suggest that substantive rather than majoritarian democracies (with their authoritarian tendencies) do best at dealing with the pandemic? In India's case, the evidence points to that. We hope this public awareness might make possible a shift back from the present popular authoritarian and majoritarian nationalism model which Covid-19 has, unfortunately, reinforced and strengthened.

<sup>37</sup> See Vignesh Radhakrishnan, Sumant Sen, and Naresh Singaravelu, "Data | Kerala flattens the coronavirus curve but must remain vigilant as 'import' cases still dominate," *The Hindu*, 16 April 2020, <https://www.thehindu.com/data/data-kerala-flattens-the-coronavirus-curve-but-must-remain-vigil-as-import-cases-still-dominate/article31351146.ece>; Binaifer Nowrojee, "How a South Indian State Flattened Its Coronavirus Curve," *The Diplomat*, 9 May 2020, <https://thediplomat.com/2020/05/how-a-south-indian-state-flattened-its-coronavirus-curve/>.



PART III  
TECHNOLOGY, SCIENCE,  
AND EXPERTISE



# International Health Regulations and Compliance in Asia

*Susan Breau\* and Preethi Lolaksha Nagaveni\*\**

## 1. Introduction

This chapter will review the Covid-19 pandemic through the lens of the international law regime of the International Health Regulations (IHR) of 2005. This analysis is very pertinent given US President Donald Trump's announcement that he has stopped his country's contribution to the World Health Organization (WHO), the body that administers the regulations, as it had "failed in its basic duty" in its response to the pandemic.<sup>1</sup> President Trump also announced on 29 May that his country would withdraw from the WHO.<sup>2</sup> It is the thesis of the chapter that although the WHO can claim some success in having worked with countries in Asia to build their capacity to respond to a pandemic, some of the countries that have been the most successful in containing the spread of Covid-19 did so despite the WHO's hesitant response. The difficulty, we argue, is that cumbersome IHR process of evaluating the threat posed by an outbreak and sounding the general alarm. This process enabled China to control the initial flow of information regarding the outbreak until such time as the WHO was able work through a cumbersome process and belatedly declare a "public health emergency of international concern." Pointing to failures in individual countries, however, misses the point. In our interconnected world the critical element in the pandemic response is international cooperation and information sharing. As Chesterman argues, international organizations are weak by design and constitute convenient "whipping boys."<sup>3</sup> In fact, several jurisdictions covered in this volume, including Singapore, Vietnam, South Korea, and Taiwan (which has

\* Professor of Law and Dean of the Faculty of Law, University of Victoria.

\*\* PhD Candidate, Lancaster University.

<sup>1</sup> "Coronavirus: US to half funding to WHO says Trump," *BBC News US and Canada*, 15 April 2020, <https://www.bbc.com/news/world-us-canada-52289056>.

<sup>2</sup> "Coronavirus: Trump terminates US relationship with WHO," *BBC News US and Canada*, 29 May 2020, <https://www.bbc.com/news/world-us-canada-52857413>.

<sup>3</sup> S. Chesterman, "COVID-19 and the Global Legal Disorder," *Simon Chesterman*, <https://simonchester.com/blog/2020/05/01/COVID-19/>.

been excluded from the WHO), have employed best practices that could be shared globally. This chapter argues that a key element of combatting a pandemic is compliance with international law and the need to strengthen its regulatory mechanisms. Sustainable Development Goal 3 aims to “ensure healthy lives and promote well-being for all ages.”<sup>4</sup> The international response in this case does not live up to this goal.

## 2. International Health Regulations and State Obligations

In a *Lancet* article published in early 2020, the co-authors stated that the purpose of the IHR is to outline public health measures to prevent, detect, and respond to infection disease outbreaks.<sup>5</sup> The first question is whether this or any other articles within the IHR are binding on states. According to the Article 38 of the Statute of the International Court of Justice, there are two main sources of international law: international conventions (treaties) and international custom.<sup>6</sup> Although the regulations do not constitute a treaty, recent academic commentary on the coronavirus accepts that the IHR is “the sole binding legal instrument dedicated to the prevention and control of the international spread of disease.”<sup>7</sup> Moreover, according to Fietta, “in exercising their sovereign right to implement international health measures to safeguard their citizens’ health, states should be mindful of their international obligations under the IHR, other applicable instruments and customary international law more generally.”<sup>8</sup> The most persuasive claim for legality comes from an article that predates this crisis. Taylor traced the development of the IHR and argues that their binding force comes from a state’s membership in the treaty that constitutes the WHO, as the regulations were adopted pursuant to Article 21 of the WHO’s constitution. The IHR automatically come into force for all WHO member states unless a state notifies the WHO director-general of any rejection or reservations.<sup>9</sup> Furthermore, 196

<sup>4</sup> UN Doc. A/Res/7011, 21 October 2015.

<sup>5</sup> N. Kandel et al., “Health Security Capacities in the Context of COVID-19 Outbreak: an analysis of International Health Regulations annual report data from 182 countries,” *The Lancet* 397, no. 10229 (2020):1047–1053, [https://doi.org/10.1016/S0140-6736\(20\)30553-5](https://doi.org/10.1016/S0140-6736(20)30553-5).

<sup>6</sup> Statute of the International Court of Justice, 18 April 1946, 33 UNTS 993.

<sup>7</sup> G.L. Burci, “The Outbreak of COVID-19: are the International Health Regulations fit for purpose?,” 27 February 2020, *EJIL Talk*, <https://www.ejiltalk.org/the-outbreak-of-COVID-19-coronavirus-are-the-international-accehealth-regulations-fit-for-purpose/>.

<sup>8</sup> R. Volterra, A. Nistal, and R. Gerhard, “Covid 19 and the WHO’s International Health Regulations (2005),” *Lexology*, <https://www.volterrafietta.com/COVID-19-and-the-whos-international-health-regulations-2005/>.

<sup>9</sup> A.L. Taylor, “International Law, and Public Health Policy,” in K. Heggenhougen and S. Quah eds., *International Encyclopedia of Public Health*, vol. 3 (San Diego: Academic Press 2008), 675.

states are parties to the regulations, confirming their customary status; the IHR are therefore universally binding on states.

For international lawyers, the obligations of national governments in response to the Covid-19 pandemic, as with the Severe Acute Respiratory Syndrome (SARS) and Ebola outbreaks before it, are derived from national compliance with the major obligations under the regulations.<sup>10</sup> In this section, we offer a preliminary assessment of compliance in Asia in relation to the timely notification by states and their preparedness and response. A comprehensive assessment is possible only after the epidemic has run its course. For now, we offer some preliminary thoughts on the application of the regulations and the gaps that have emerged.

### 3. Timely Notification and the WHO

On 30 December 2019, Li Wenliang, a Chinese ophthalmologist, recognized a possible outbreak of Covid-19 and sent a message to a group of fellow doctors warning about the possible outbreak of an illness resembling SARS in Wuhan Central Hospital, where he worked and learnt that patients were being quarantined.<sup>11</sup> One day later, the WHO China Country Office was informed of cases of pneumonia with unknown cause.<sup>12</sup> Two weeks later, on 13 January 2020, Thailand reported the first imported case of coronavirus, with Japan following two days later. On 20 January 2020, the Republic of Korea reported its first case of the novel coronavirus,<sup>13</sup> with China declaring the Covid-19 outbreak as an emergency on the same day.<sup>14</sup>

This brief chronology, recounted in other chapters in this volume,<sup>15</sup> raises several questions. When Dr. Li sent his text message to his fellow doctors on 30 December, patients were already being quarantined in Wuhan. So, when exactly was the first case discovered in China and how long did it actually take to inform the WHO from the date of first discovery? And why did China not inform the WHO of the outbreak earlier, as required by Article 6 of the IHR?<sup>16</sup> China

<sup>10</sup> D.P. Fidler, "From International Sanitary Conventions to Global Health Security," *Chinese Journal of International Law* 325, no. 4 (2005).

<sup>11</sup> A. Green, "Obituary," *The Lancet* 395, no. 10225 (25 February 2020): 682, [https://doi.org/10.1016/S0140-6736\(20\)30382-2](https://doi.org/10.1016/S0140-6736(20)30382-2); see also Wu, Chapter 5, this volume.

<sup>12</sup> "WHO Novel Coronavirus Situation Report – 1," World Health Organization, 21 January 2020, [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200121-sitrep-1-2019-ncov.pdf?sfvrsn=20a99c10\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200121-sitrep-1-2019-ncov.pdf?sfvrsn=20a99c10_4).

<sup>13</sup> "WHO Novel."

<sup>14</sup> Hegarty, "The Chinese doctor"; see also AP News Agency, "China failed to warn public of coronavirus threat for days: AP," *Al Jazeera*, 15 April 2020, <https://www.aljazeera.com/news/2020/04/china-failed-warn-public-covid-19-pandemic-days-ap-200415050833262.html>.

<sup>15</sup> See Ramraj and Little, Chapter 1; Xu and Liu, Chapter 2; and Wu, Chapter 5, all in this volume.

<sup>16</sup> See also IHR Annex 2, 2005.



informed the WHO after Dr. Li's message.<sup>17</sup> Following the tragic demise of Dr. Li due to Covid-19, the Chinese government exonerated and apologized to his family in what appeared to have been a rare admission of guilt.<sup>18</sup>

Meanwhile, it subsequently emerged that, four days before the WHO's China Country Office being informed of cases in Wuhan, a patient who was treated for a suspected case of pneumonia at a hospital near Paris on 27 December 2019 was likely to have been infected with the virus that causes Covid-19; the WHO acknowledged the possibility of more early cases coming into light, urging countries to check their records for similar cases to get a clearer picture of the epidemiology of the outbreak.<sup>19</sup> The question can also be raised as to whether France complied with Article 6 of the IHR.

On 5 January 2020, the WHO published the first disease outbreak news on the new virus which was reported by China<sup>20</sup> in which, assessing the risk, the WHO said that there had been symptoms among patients common to several respiratory diseases and pneumonia seen in the winter season. The WHO did not recommend any specific measures for travellers. More importantly, it advised against the application of any travel or trade restrictions on China at that time.<sup>21</sup> It was only on 22–23 January 2020 that the WHO director-general convened an Emergency Committee under the IHR 2005 to assess whether the outbreak constituted a public health emergency of international concern. The Committee could not arrive at a consensus.<sup>22</sup> This was the first time that states were told to prepare for containment of Covid-19 and share full data with the WHO.<sup>23</sup>

On 30 January 2020, the WHO once again convened the Emergency Committee on Covid-19 and declared the outbreak of a public health emergency

<sup>17</sup> See Wu, Chapter 5, this volume.

<sup>18</sup> Marty Johnson, "China issues 'solemn apology' to doctor reprimanded for early coronavirus warnings," *The Hill*, 20 March 2020, <https://thehill.com/policy/healthcare/public-global-health/488620-china-issues-solemn-apology-to-late-doctor-reprimanded>; see also Luke O'Reilly, "China apologises to family of hero doctor who died after warning of coronavirus," *Evening Standard*, 20 March 2020, <https://www.standard.co.uk/news/world/china-exonerates-doctor-coronavirus-outbreak-dr-li-a4392791.html>.

<sup>19</sup> "Coronavirus: France's first known case 'was in December,'" *BBC News Europe*, 5 May 2020, <https://www.bbc.co.uk/news/world-europe-52526554?fbclid=IwAR3gmNOqhhDH5UfBJ2LeoGmXqMQFh42WTHtKcNrlFEuVffGjix64FKNVZ1U#>; and see F-X. Lecure et al., "Clinical and Virological Data of the first cases of Covid-19 in Europe: a case series," *The Lancet* 20, no. 6 (1 June 2020): 697–706, [https://doi.org/10.1016/S1473-3099\(20\)30200-0](https://doi.org/10.1016/S1473-3099(20)30200-0).

<sup>20</sup> "Pneumonia of Unknown Cause – China," Disease Outbreak News, World Health Organization, 5 January 2020, <https://www.who.int/csr/don/05-january-2020-pneumonia-of-unknown-cause-china/en/>.

<sup>21</sup> "Pneumonia of Unknown."

<sup>22</sup> "Statement on the meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV)," World Health Organization, 23 January 2020, [https://www.who.int/news-room/detail/23-01-2020-statement-on-the-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/23-01-2020-statement-on-the-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)).

<sup>23</sup> "Statement on the meeting."

of international concern. In its Novel Coronavirus (2019-nCoV) Situation Report-10 released that day, the WHO revealed that there were 7,818 confirmed cases of Covid-19 reported globally and 82 confirmed cases of deaths in eighteen countries outside China. China alone reported 7,736 confirmed cases. A risk assessment of “Very High” was given for China and “High” at the global level. This decision was taken by WHO a full month from the date of first receipt of information on Covid-19. Even at this point, however, the Committee did not recommend any travel or trade restrictions.<sup>24</sup> Subsequently, the WHO in its Novel Coronavirus (2019-nCoV) Situation Report-22, dated 11 February 2020, named the disease “Covid-19.”

A joint mission of twenty-five WHO and Chinese experts was conducted in China from 16 to 24 February 2020. The final report explained in detail the signs, symptoms, disease progression, and severity of the disease, noting that since the start of the Covid-19 outbreak, there had been extensive attempts to better understand the virus and the disease in China.<sup>25</sup> The report also recognized the SARS-CoV-2 virus as a new pathogen that was highly contagious, with potentially enormous health, economic, and societal consequences. The report warned that scenarios and strategies modelled only on well-known pathogens would not be sufficient to contain the SARS-CoV-2 virus that causes the Covid-19 disease.<sup>26</sup>

Despite this sombre assessment, the WHO, in its “COVID-19 Travel Advice” dated 29 February 2020, advised against applying travel or trade restrictions on countries with Covid-19 outbreaks, stating that restrictions could “interrupt needed aid and technical support . . . disrupt businesses, and . . . have negative social and economic effects on affected countries.”<sup>27</sup> This advice will likely remain the subject of much controversy and criticism well after the pandemic has passed. The jurisdictions in Asia that did not heed this advice, acting swiftly to impose travel and trade restrictions (notably Vietnam and Taiwan), were among the most successful in containing the virus.<sup>28</sup> On 11 March 2020 the WHO

<sup>24</sup> “WHO Timeline-COVID-19,” World Health Organization, 27 April 2020, <https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>; *see also* “Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV),” World Health Organization, 30 January 2020, [https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)).

<sup>25</sup> “Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19),” 16–24 February 2020, at 5, 12, 14, <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>.

<sup>26</sup> “WHO-China Joint Mission,” 18–20.

<sup>27</sup> “Updated WHO recommendations for international traffic in relation to COVID-19 outbreak,” World Health Organization, 29 February 2020, <https://www.who.int/news-room/articles-detail/updated-who-recommendations-for-international-traffic-in-relation-to-covid-19-outbreak>.

<sup>28</sup> *See*, on Taiwan, Chang and Lin, Chapter 3, and on Vietnam, Nguyen and Phan, Chapter 4, both in this volume.

revealed 118,319 confirmed cases and 4,292 deaths reported worldwide in 113 countries, of which 37,364 cases and 1,130 deaths were outside China. In its risk assessment, the international health body declared the prevailing risk level in China, both regionally and globally, to be “Very High.” It was only on that day that the WHO assessed that Covid-19 could be characterized as a pandemic.<sup>29</sup>

Keeping in view the IHR and the way China and the WHO dealt with the rapidly evolving, unprecedented health situation created by Covid-19, one can conclude that the responses of China and the WHO were invariably inadequate and inappropriate, which is also one of the pertinent factors for the loss of more than 300,000 precious lives around the world and an unimaginable loss in every sphere of human life and development.

#### 4. Preparedness and Response

Besides timely notification, there are other obligations within the IHR that states must adhere to. Article 13 mandates that each state party develop, strengthen, and maintain the capacity to respond promptly and effectively to public health emergencies of international concern.<sup>30</sup> The WHO assesses compliance with these requirements in their situation reports under the category “Preparedness and Response.” However, the assessment does not contain any criticism of the national response; it merely reports the measures. Although the lack of preparedness requires a comprehensive assessment after the pandemic has run its course, this part of the chapter highlights the challenges of preparing and responding effectively to the outbreak of a serious infectious disease.

The WHO took three days (until 2 January 2020) to activate the Incident Management System across the three levels of the WHO (country office, regional office, and headquarters) and develop the surveillance case definitions for human infection with Covid-19. The organization developed interim guidance, provided recommendations to reduce the risk of transmission from animals to humans, and activated an “R&D blueprint” to accelerate diagnostics, vaccines, and therapeutics. The R&D blueprint enabled it to work with its networks of researchers and other experts to coordinate global work on surveillance, epidemiology, modelling, diagnostics, clinical care and treatment, and other ways to identify and manage the disease and to limit transmission. The WHO also issued

<sup>29</sup> “WHO Timeline-COVID-19”; *see also* “Coronavirus Disease 2019 (COVID-19) Situation Report 51,” World Health Organization, 11 March 2020, [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57\\_10](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_10).

<sup>30</sup> IHR art. 13, 2005. The deadline was 15 June 2012 as the regulations came into force on 15 June 2007.

interim guidance for countries, updated to take into account the situation at that time.<sup>31</sup>

On 4 February 2020, the director-general of WHO requested the secretary-general of the United Nations to establish a Crisis Management Team to coordinate the UN system-wide scale-up to help countries prepare for and respond to Covid-19. On 6 February 2020, the UN Development Coordination Office along with the WHO informed all resident coordinators and UN Country Teams to provide updates on the Covid-19 epidemiological situation and introduce the Covid-19 Strategic Preparedness and Response Plan, emphasizing the importance of responding to the crisis as “One UN.”<sup>32</sup>

According to the WHO, much of the global community was not in a mindset or ready materially to implement the measures that were employed to contain the spread of Covid-19 beyond China. Fundamental to these measures was proactive surveillance to immediately detect cases, rapid diagnosis and immediate case isolation, rigorous tracking, and quarantine of close contacts. It also noted that non-pharmaceutical interventions can reduce and even interrupt transmission, including containment strategies.<sup>33</sup> The WHO also had already made major recommendations separately for China, countries with imported cases and/or outbreaks of Covid-19, uninfected countries, the public, and the international community as to how Covid-19 could be managed, prevented from spreading further, and contained.<sup>34</sup>

Despite the WHO’s initial reluctance to recommend strict measures to contain the spread of the virus, the response by a few countries in Asia to the outbreak were exemplary, allowing us to understand how they managed the unprecedented pandemic, each in its unique way. Here, we briefly mention three countries that are also discussed in more detail in this collection: Vietnam, the Republic of Korea (South Korea), and Singapore.

## A. Vietnam

Densely populated (95 million) Vietnam, neighbouring China, saw its first case on 23 January 2020.<sup>35</sup> To contain the spread of the virus, Vietnam suspended all flights

<sup>31</sup> “WHO Novel Coronavirus Situation Report – 1.”

<sup>32</sup> “COVID-19 Strategic Preparedness and Response Plan Operational Planning Guidelines to Support Country Preparedness and Response,” World Health Organization, 12 February 2020, at 2, [https://www.who.int/docs/default-source/coronaviruse/covid-19-sprp-unct-guidelines.pdf?sfvrsn=81ff43d8\\_4](https://www.who.int/docs/default-source/coronaviruse/covid-19-sprp-unct-guidelines.pdf?sfvrsn=81ff43d8_4).

<sup>33</sup> “WHO-China Joint Mission,” 19–20.

<sup>34</sup> “WHO-China Joint Mission,” 21–23.

<sup>35</sup> Le Van Cuong et al., “The first Vietnamese case of COVID-19 acquired from China,” *The Lancet* 20, no. 4 (1 April 2020): 408–409, [https://doi.org/10.1016/S1473-3099\(20\)30111-0](https://doi.org/10.1016/S1473-3099(20)30111-0). See also Nguyen and Phan, Chapter 4, this volume.

to mainland China as early as 1 February 2020, followed by all international flights on 25 March.<sup>36</sup> Rigorous quarantine policies were put in place along with complete contact tracing of people who might have come in contact with the virus.<sup>37</sup> Aware of the strain that a pandemic could place on its healthcare system, Vietnam implemented these measures much earlier in the course of the epidemic in comparison to China, which used lockdowns as a last resort to keep the virus from spreading. With only ten confirmed cases, Vietnam put an entire town of 10,000 people under a lockdown on 12 February.<sup>38</sup> The government called the novel virus a “foreign enemy” and called on the nation as a whole to fight the epidemic.<sup>39</sup> Social isolation measures were lifted on 22 April 2020. Precautionary measures such as limiting the gathering of people and wearing masks mandatorily remained in place at the end of May 2020.<sup>40</sup> The WHO revealed that, as of 29 May 2020, the total confirmed Covid-19 cases in Vietnam was 327, with no deaths reported.<sup>41</sup>

## B. Republic of Korea

The first Covid-19 case in the Republic of Korea was reported on 20 January 2020.<sup>42</sup> As early as 3 January 2020, the health authority had put in place a strong surveillance for pneumonia cases in health facilities throughout the country. At the same time, quarantine and screening measures were enhanced for travellers from Wuhan at points of entry.<sup>43</sup> Although the initial spread of Covid-19 was slow, with only thirty cases reported between 20 January and 18 February, the next ten days saw the number rise to 2,300.<sup>44</sup> South Korea was able to contain

<sup>36</sup> Pritesh Samuel, “How Vietnam contained COVID-19 and why its economy will rebound,” *Vietnam Briefing*, 5 May 2020, [https://www.vietnam-briefing.com/news/how-vietnam-successfully-contained-covid-19.html/?fbclid=IwAR0gunmYXMncgucKTeC9nQ\\_zONAV2saa0JAc\\_c1YVX6He2qpu3msz8JLo7g](https://www.vietnam-briefing.com/news/how-vietnam-successfully-contained-covid-19.html/?fbclid=IwAR0gunmYXMncgucKTeC9nQ_zONAV2saa0JAc_c1YVX6He2qpu3msz8JLo7g).

<sup>37</sup> Minh Vu and Bich T. Tran, “The secret to Vietnam’s COVID-19 response success,” *The Diplomat*, 18 April 2020, [https://thediplomat.com/2020/04/the-secret-to-vietnams-covid-19-response-success/?fbclid=IwAR1MXcTgLQ2vqr\\_D7-1BAVJofD9pVLrJxVajOs8wdamfi9SqKGKFlrAvSGQ](https://thediplomat.com/2020/04/the-secret-to-vietnams-covid-19-response-success/?fbclid=IwAR1MXcTgLQ2vqr_D7-1BAVJofD9pVLrJxVajOs8wdamfi9SqKGKFlrAvSGQ).

<sup>38</sup> “How Vietnam is winning its ‘war’ on coronavirus,” *DW*, <https://www.dw.com/en/how-vietnam-is-winning-its-war-on-coronavirus/a-52929967?fbclid=IwAR1wByiq15YkXETXo2XxlHMPSdLTeYPkgFLfZaKSG6pNzbOqrUfBNw2lZWo>.

<sup>39</sup> “The secret to Vietnam’s COVID-19 response success.”

<sup>40</sup> “How Vietnam contained COVID-19.”

<sup>41</sup> “Coronavirus Disease 2019 (COVID-19) Situation Report – 130,” World Health Organization, 29 May 2020, [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200529-covid-19-sitrep-130.pdf?sfvrsn=bf7e7f0c\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200529-covid-19-sitrep-130.pdf?sfvrsn=bf7e7f0c_4); see also, on South Korea, Chung and Lee, Chapter 16, this volume.

<sup>42</sup> “WHO Novel Coronavirus Situation Report – 1.”

<sup>43</sup> “WHO Novel Coronavirus Situation Report – 1.”

<sup>44</sup> “How South Korea contained Covid-19 without a lockdown,” *Investec*, 9 April 2020, [https://www.investec.com/en\\_gb/focus/coronavirus/how-south-korea-contained-covid-19-without-a-lockdown.html?fbclid=IwAR1oRKuS5VmBqbCnJQTYWPjmwJIA-t1w4dMQEBZVe80o0QRks\\_VIR1dGUuI](https://www.investec.com/en_gb/focus/coronavirus/how-south-korea-contained-covid-19-without-a-lockdown.html?fbclid=IwAR1oRKuS5VmBqbCnJQTYWPjmwJIA-t1w4dMQEBZVe80o0QRks_VIR1dGUuI).

the spread of the virus by using three key strategies: free and fast testing, expansive tracing technology, and mandatory isolation of the most severe cases.<sup>45</sup> Travellers arriving from abroad were told to self-isolate for two weeks.<sup>46</sup> Within a week of its first confirmed case, the government urged medical companies to develop coronavirus test kits and prepare for mass production; by 5 March, more than 145,000 people had been tested for the virus since testing began. The authorities also took care to ensure that hospitals were not overrun with patients. The officials opened 600 testing centres and used drive-through testing stations, reducing indoor, face-to-face contact.<sup>47</sup> Although schools were closed, in contrast with China, Italy, and the United Kingdom, South Korea did not impose a lockdown.<sup>48</sup> On 11 May 2020, total confirmed cases of Covid-19 in South Korea was 11,402 and total reported deaths was 269.<sup>49</sup>

### C. Singapore

On 23 January 2020, Singapore reported its first imported Covid-19 case.<sup>50</sup> Singapore's Ministry of Health immediately initiated contact tracing and quarantined those who came in contact with the patient for fourteen days as a precautionary measure.<sup>51</sup> Since 3 January, the health authority had strengthened surveillance for pneumonia cases in health facilities throughout the country, imposing border screening measures for flights arriving from Wuhan at the international airport. On 22 January, border health measures were further enhanced, with temperature screening measures for all flights from China. Land and sea checkpoint screening measures were also intensified.<sup>52</sup> On 1 February 2020, the government distributed four masks to each household and advised

<sup>45</sup> Derek Thompson, "What's behind South Korea's COVID-19 Exceptionalism?," *The Atlantic*, 6 May 2020, <https://www.theatlantic.com/ideas/archive/2020/05/whats-south-koreas-secret/611215/?fbclid=IwAR25CUcmEyXcG3XBZciYLRyJw0KJwrwbul29Q2vrliHr7WMCCIDP6LHomLc>.

<sup>46</sup> Thompson, "What's behind."

<sup>47</sup> Thompson, "What's behind."

<sup>48</sup> Sean Fleming, "South Korea's Foreign Minister explains how the country contained COVID-19," *World Economic Forum*, 31 March 2020, <https://www.weforum.org/agenda/2020/03/south-korea-covid-19-containment-testing/?fbclid=IwAR2r4J1rRwsd8fUs7eC9YzDnWdRj7GRwOXuDJdeiX-gkk0ZlW1K1M6EqK1k>.

<sup>49</sup> "Coronavirus Disease 2019 (COVID-19) Situation Report – 130."

<sup>50</sup> "Confirmed Imported case of novel coronavirus in Singapore; Multi-Ministry Taskforce ramps up precautionary measures," Ministry of Health, 23 January 2020, <https://www.moh.gov.sg/news-highlights/details/confirmed-imported-case-of-novel-coronavirus-infection-in-singapore-multi-ministry-taskforce-ramps-up-precautionary-measures> (Singapore).

<sup>51</sup> "Confirmed Imported case."

<sup>52</sup> "Novel Coronavirus (2019-nCoV) Situation Report – 4," World Health Organization, 24 January 2020, [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200124-sitrep-4-2019-ncov.pdf?sfvrsn=9272d086\\_8](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200124-sitrep-4-2019-ncov.pdf?sfvrsn=9272d086_8).

residents to wear them if they were feeling unwell or seeking medical care.<sup>53</sup> As part of its strict travel restrictions, on 3 March 2020, Singapore announced that travellers from Iran, Northern Italy, and South Korea, which were all experiencing outbreaks, would not be allowed to transit through or enter the country.<sup>54</sup> Singapore succeeded in containing the pandemic until 17 March; however, the government had not taken into consideration the crowded living conditions of migrant workers, which were conducive to the spread of the virus, and the number of confirmed cases grew rapidly from 266 on 18 March to over 5,900 by 19 April, as a second wave hit the country.<sup>55</sup> As of 29 May 2020, the total confirmed cases of Covid-19 in Singapore was 33,249 and total reported deaths was 373.<sup>56</sup>

With the exception of Singapore's belated response to the living conditions of its migrant worker population, the response of these three countries reveals that the sufficiency of measures taken in response to a pandemic does not merely depend on adequacy of the healthcare system. It also depends, critically, on the government's response to the crisis and the overall political leadership, public compliance with public health measures, and the enforcement capacity of public health authorities.

## 5. The WHO's Role in Enhancing National Capacity

In their *Lancet* article, Kandel et al., in a study involving 182 countries that are members of the WHO, reported that only about half the countries had operational readiness to respond to public health emergencies.<sup>57</sup> It is evident in the context of the Covid-19 pandemic that in many countries including the United States, Italy, Spain and the United Kingdom, there was a lack of basic testing capacity, medical equipment, and ability to conduct tracing. In this respect, many countries in Asia, as discussed in this volume, were better prepared to respond to the pandemic.

What, then, should the organization responsible for implementing the health regulations have done before the epidemic to facilitate national responses? The

<sup>53</sup> Michael Yong, "Timeline: How the COVID-19 outbreak has evolved in Singapore so far," *CAN International Edition*, 18 April 2020, <https://www.channelnewsasia.com/news/singapore/singapore-covid-19-outbreak-evolved-coronavirus-deaths-timeline-12639444>.

<sup>54</sup> Yong, "Timeline: How."

<sup>55</sup> James Griffiths, "Singapore had a model coronavirus response, then cases spiked. What happened?," *CNN*, 19 April 2020, <https://edition.cnn.com/2020/04/18/asia/singapore-coronavirus-response-intl-hnk/index.html?fbclid=IwAR1TQ1SpU9SIII2TjBKF4MLaonRTEqJU8q7Qer4vfddvONi1bRtSDtxq7tQ>.

<sup>56</sup> "Coronavirus Disease 2019 (COVID-19) Situation Report – 130."

<sup>57</sup> Kandel et al., "Health Security."

difficulty in international law is that it does not have an enforcement mechanism and relies instead on co-operation and goodwill. The WHO infrastructure spends a great deal of time assessing national capacity and identifying systemic weaknesses. In the Ebola crisis, for instance, none of the countries most affected had sufficient capacity to respond, so they depended on richer countries and non-governmental organizations, including Médecins sans frontières and the Red Cross, to assist with the response.<sup>58</sup> In this case the developed nations have major outbreaks and no immediate capacity to provide major assistance to developing countries. In a *Lancet* editorial, the author praised the WHO for providing clear, consistent, and evidence-based recommendations and argued the importance of collectivity and community.<sup>59</sup> Davies reports one good example of regional cooperation. Starting in 2004 in the aftermath of the SARS epidemic, member states of the WHO South-East Asia Regional Office and Western Pacific Regional Office began meeting to develop a collective strategy for addressing infectious disease outbreaks.<sup>60</sup> These meetings led to the Asia Pacific Strategy for Emerging Diseases, now in its third iteration from 2017.<sup>61</sup> The focus of the WHO's strategy is in building national capacity, but it has attracted criticism for failing to focus on cultural or societal prevention.<sup>62</sup> Notwithstanding this criticism, this strategy did address pandemic preparation with good infection prevention and control practices. The Asia-Pacific region including the Republic of Korea, Vietnam, Singapore, and Taiwan (not even a state party) has implemented the IHR far more successfully than other regions, as is evident in this volume.

## 6. Revitalizing International Health Governance

With the credibility of international health governance at stake, the time is ripe to reconsider two important aspects or stages of IHR implementation: the notification requirement and the determination of a “public health emergency of international concern.” The WHO serves a wide range of member states, some with

<sup>58</sup> R. Wilson, *Epidemic: Ebola and the Global Race to Prevent the Next Killer Outbreak* (Brooking, 2018); C.E. Coltart et al., *The Ebola Outbreak, 2013–2016: Old Lessons for New Epidemics* (Royal Society, 2017); M.E. Snodgrass, *World Epidemic: A Cultural Chronology of Disease from Prehistory to the Era of Zika* (McFarland and Company, 2017).

<sup>59</sup> Editorial, *The Lancet* 395, no. 28 (March 2020).

<sup>60</sup> S. Davies, “National Security and Pandemics,” *UN Chronicle*, <https://www.un.org/en/chronicle/article/national-security-and-pandemics>.

<sup>61</sup> *Asia Pacific Strategy for Emerging Diseases and Public Health Emergencies* (Manila, Philippines: World Health Organization), <https://iris.wpro.who.int/bitstream/handle/10665.1/13654/9789290618171-eng.pdf>.

<sup>62</sup> H. Dent, “The APSED should have done more to prevent this Pandemic,” *Medium*, 20 March 2020, [https://medium.com/@dentthomas/dont-blame-china-the-who-or-trump-blame-the-apsed-for-the-COVID-19-coronavirus-pandemic-17c95705ed7c?source=post\\_page](https://medium.com/@dentthomas/dont-blame-china-the-who-or-trump-blame-the-apsed-for-the-COVID-19-coronavirus-pandemic-17c95705ed7c?source=post_page).



a greater capacity to respond to a pandemic, others with a lesser capacity. Yet others, such as China, have an immense capacity to respond, but their hesitancy to share critical public health information impedes the ability of other countries to respond effectively.<sup>63</sup> That Vietnam, South Korea, and Singapore were able to respond as effectively as they did is, in part, a consequence of their own national circumstances, but it is also a consequence of the WHO's work, during previous epidemics, to help them prepare for an outbreak such as this one. The WHO's coordinating role in the Asia-Pacific region, through its regional capacity-building meetings in the years leading up to Covid-19, cannot therefore be swept aside. However, the WHO also plays an important role in managing the flow of information and alerting its members to emerging threats. Although its local office was alerted soon after the virus emerged, it was slow to implement measures that its own policies and protocols indicated were necessary. On a geopolitical level, its hesitancy might be understandable. A false alarm could damage its fragile legitimacy as an international institution, with serious economic consequences for the countries affected. Yet the aftermath of Covid-19 suggests that it reacted too cautiously and to its detriment, with its credibility as a neutral, technocratic, and evidence-based organization under scrutiny. In this section, we address this challenge from the perspective of international law and governance.

### A. The Ambiguity in Notification

The notification clause in Article 6 of the IHR is accomplished by a decision instrument in Annex 2. The notification period is specified as twenty-four hours after assessment of a public health emergency to the national focal point of the WHO.<sup>64</sup> However, according to Clause 6(a) of Annex-1A, i.e., Core Capacity Requirements for Surveillance and Response, each state must have “the capacity to assess all reports of urgent events within 48 hours at the national level,” which extends the possibility of notification by a full day and is in direct contradiction of Article 6 above.<sup>65</sup> Again, Clause 6(b) of Annex-1A prescribes that members states must inform the WHO within twenty-four hours of receipt of evidence of a public health risk identified outside their territory that may cause international disease spread, as manifested by exported or imported cases.<sup>66</sup> This could not be done if the full forty-eight-hour period specified previously is taken. This ambiguity of notice periods needs to be corrected in order to avoid undesirable

<sup>63</sup> See Wu, Chapter 5, this volume.

<sup>64</sup> World Health Regulations, art. 6.

<sup>65</sup> World Health Regulations, Annex A, art. 6.

<sup>66</sup> World Health Regulations, Annex A, art. 6.

comments or criticism over the functions of any state at the time of managing a health emergency situation.

## B. The Determination Procedure

After a notification by any state of a public health emergency, a lengthy procedure has been prescribed under IHR for the Determination of a Public Health Emergency of International Concern by the director-general of the WHO. An analysis of the procedure is pertinent to make comment on the compliance of IHR and its impact on the global population.

After receipt of notification or information from any state, the WHO is required under Article 8, if requested, to assist that state in assessing the epidemiological evidence. The WHO can take into account reports from sources other than notifications or consultations and must assess these reports according to established epidemiological principles, communicating its assessment to the state (Article 9) and obtaining verification from the state party. It is required to offer its assistance to the state in assessing the potential for international disease spread, possible interference with international traffic, and the adequacy of control measures according to a procedure set out in Article 10. But Article 11 mandates that the WHO shall not make information received by it from any state generally available to other states until the state which gave the information agrees to it or until such time as the event is determined to constitute a public health emergency of international concern in accordance with Article 12. This provision helps to explain why even after the WHO's local office in China was alerted of the outbreak, it could not immediately sound a general alarm. The flow of information regarding an outbreak is, in the first instance, controlled by the member state.

However, the director-general of WHO is empowered to determine whether the information it receives regarding the event constitutes a public health emergency of international concern. To do so, the director-general must first constitute an "Emergency Committee" under Article 48, composed of experts selected by the director-general from the IHR Expert Roster (established by Article 47). The Emergency Committee meets (as provided in Article 49) to determine whether an event constitutes a public health emergency of international concern, assessing the risk to human health, the risk of international spread of disease, and the risk of interference with international traffic, among other matters. Its determination is then forwarded to the director-general of WHO for a final determination and to communicate to member states the determination (or the termination) of a public health emergency of international concern, any health measure taken by the state party concerned, and any temporary recommendation

(or in ongoing cases, the modification, extension, and termination of such recommendations) together with the views of the Emergency Committee. This is a very lengthy procedure which lacks prescribed time limits. As a consequence, the WHO under Article 12 on Covid-19 took a full month (i.e., until 30 January 2020) after receiving notification from China on 31 December 2019. We have seen the tragic result due to the delay in the process of compliance with Article 12 earlier in this chapter. As a result, the consequences (as discussed in this volume) were that most countries acted on their own accord, without the formal direction of the WHO. Tragically, the extent of the danger posed by the virus was not widely publicized.

## 7. Conclusions and Recommendations for International Health Governance

Chesterman argues that this pandemic will not result in a Global Health Council similar to the Security Council, with powers to address a pandemic despite a lack of international will. However, there is clearly a need for better global cooperation when a virus such as this can literally spread across the globe in twenty-four hours. The fact that one-half of the world does not have national health capacity to fulfill any of the obligations to notify promptly or to prevent or respond has to be a matter for global concern. But in this case the real issue was the lack of information flow management and the delay in determining a pandemic. Even prior to this pandemic there were calls to enhance the IHR. Katz argued that the WHO had little recourse against countries that do not meet their obligations to protect global health, and often, such as in the case of Tanzania with Ebola, those countries had to resort to pleading.<sup>67</sup> She argued that as with parties to the Biological Weapons Convention, parties to the IHR should meet regularly in international review conferences to discuss developments and their implications for the IHR.<sup>68</sup> One example of international cooperation dates back to 2011, when the WHO negotiated the Pandemic Influenza Preparedness Framework for the sharing of influenza viruses and access to vaccines and other benefits.<sup>69</sup> This initiative led to genetic sequencing. Telesetsky argues that the WHO played a key role “as a facilitator in managing transmission of epidemiological information and sharing of effective national strategies across global networks.”<sup>70</sup>

<sup>67</sup> R. Katz, “Pandemic Policy can learn from Arms Control,” *World View, Nature*, 12 November 2019, <https://www.nature.com/articles/d41586-019-03452-0>.

<sup>68</sup> Katz, “Pandemic Policy.”

<sup>69</sup> “Pandemic Influenza Preparedness Framework,” Newsroom, World Health Organization, 8 May 2017, <https://www.who.int/news-room/q-a-detail/pandemic-influenza-preparedness-framework>.

<sup>70</sup> A. Telesetsky, “International Governance of Global Health Pandemics,” *American Society of International Law Insights* 24, no. 3, 23 March 2020.

We therefore recommend that the WHO convene an international review conference to review the health organization's response to Covid-19, with a particular focus on amending the IHR. In particular, we recommend the incorporation of a mandatory provision into the IHR 2005 after Article 7, to alert the people of the world to protect themselves from any possible health risk and enable state parties to respond to the situation more effectively. The provision, which could be incorporated as Article 7(A), is worded as follows:

Article 7(A): General Health Alert

*After receipt of notification from any member State as per Article 6(1) or 7, the WHO shall, within 24 hours, share the content of the notification received with all its member States and provide them all necessary advisories and alert them to take appropriate preventive steps to protect the people in their respective countries, according to their domestic public health laws, from a possible health risk of any virus or disease or epidemic or an unusual health event as notified by a member State.*

This provision might have avoided nations acting on their own with little or no information. Finally, it is evident from this discussion that global leadership in this pandemic has not come from the WHO or the G20 but from several countries in Asia. However, effective responses have, in some cases, involved increased personal surveillance and fundamental threats to privacy.<sup>71</sup> It is imperative that the global community convene a review conference of the IHR and assess the implications of the responses to Covid-19 discussed in this chapter and this volume. It is only with international cooperation and “lessons learned” processes that effective strategies can be developed and refined to respond to pandemics.

<sup>71</sup> See Wu, Chapter 5, this volume.



# Can Technology and Privacy Co-Exist in a Pandemic?

Ze Shi Li,<sup>\*</sup> Visakha Phusamruat,<sup>\*\*</sup> Tony Clear,<sup>\*\*\*</sup> and Daniela Damian<sup>\*\*\*\*</sup>

## 1. Introduction

Digital technology has played a key role in enabling and enforcing many of the Covid-19 containment measures in Asia. As other chapters in this book have shown, from mandatory lockdowns, to restrictions on non-essential travel, to walking within the community, these measures were intended to drastically reduce close physical contact with other people in order to reduce the spread of the virus. Technology has helped governments deploying these measures and citizens in continuing with their restricted lives. Governments have relied on digital channels such as social media, news outlets, and official government websites to disseminate health guidelines and educate the public. They integrated various data sources, using mobile phone Global Positioning System (GPS) locations for contact tracing,<sup>1</sup> and established virtual boundaries, or *geofences*, to enforce isolation or quarantine measures.<sup>2</sup> In response to stay-at-home and self-quarantine orders, people turned to technologies to carry on with daily life. Video conferencing software such as Zoom made working and learning from home more convenient.<sup>3</sup> Yet these technology-assisted measures were made possible through the collection, processing, and dissemination of personal information, with notable social implications such as social embarrassment and stigma, raising a critical question about the interplay between technology and privacy during the pandemic: Do the short-term benefits of using these technologies to

<sup>\*</sup> PhD Student, Department of Computer Science, University of Victoria.

<sup>\*\*</sup> Lecturer, Graduate School of Law, National Institute of Development Administration.

<sup>\*\*\*</sup> Associate Professor, Software Engineering Research Lab, Auckland University of Technology.

<sup>\*\*\*\*</sup> Professor of Software Engineering, Department of Computer Science, University of Victoria.

<sup>1</sup> Elizabeth Law and Chang May Choon, "How China, South Korea and Taiwan are using tech to curb coronavirus outbreak," *The Straits Times*, 21 March 2020, <https://str.sg/JfWq>.

<sup>2</sup> Uptin Saiidi, "Hong Kong is putting electronic wristbands on arriving passengers to enforce coronavirus quarantine," *CNBC*, 18 March 2020, <https://www.cnbc.com/2020/03/18/hong-kong-uses-electronic-wristbands-to-enforce-coronavirus-quarantine.html>.

<sup>3</sup> Natalie Sherman, "Zoom sees sales boom amid pandemic," *BBC News*, 2 June 2020, <https://www.bbc.com/news/business-52884782>.

suppress the community-wide public health crisis justify the detrimental long-term consequences for privacy?

In this chapter we address this complex question through an inevitably incomplete discussion of personal data protection laws, technology design, and trust in governments and technology providers as well as cultural understandings of privacy. After an outline of the technology-assisted measures in various regions in Asia (section 2), we highlight major privacy concerns (section 3) and discuss a number of trade-offs that emerge from the use of technology to contain the spread of the virus (section 4). We use Daniel Solove's taxonomy of privacy<sup>4</sup> to understand the privacy-related harms to individual and social groups. These trade-offs exemplify the risks of adoption of just-in-time software technologies for public health purposes without fully understanding their impact on users and of potentially erroneous data-driven decisions and the involuntary collection of personal data; they also raise important policy questions in the dynamic and fast-shifting context of the Covid-19 pandemic.

## 2. Technology-Assisted Response Measures

Software technologies have been crucial in the rollout and operation of public health measures during the pandemic. However, from the perspective of software engineers, the privacy of end-user data, which is viewed as a “non-functional requirement,”<sup>5</sup> is notoriously difficult to explicitly express, validate, and verify in software systems; it is particularly difficult to realize than a functional requirement (e.g., that the home menu opens when a user clicks on the menu button), and is often overlooked in the implementation of software.

Recent stringent privacy regulations such as the General Data Protection Regulation (GDPR)<sup>6</sup> in Europe signalled the importance of privacy in the early stages of software development. However, many software firms are still not GDPR-compliant.<sup>7</sup> It is challenging for a firm that has neither embraced nor prioritized privacy by design<sup>8</sup> to suddenly integrate privacy protections into

<sup>4</sup> Daniel J. Solove, “The meaning and value of privacy,” *Social Dimensions of Privacy: Interdisciplinary Perspectives* 71 (2015).

<sup>5</sup> Martin Glinz, “On Non-Functional Requirements,” 15th IEEE International Requirements Engineering Conference (October 2007), 21–26, <https://doi-org.ezproxy.library.uvic.ca/10.1109/RE.2007.45>.

<sup>6</sup> “Complete guide to GDPR compliance,” <https://gdpr.eu/>.

<sup>7</sup> Meera Narendra, “Almost a third of EU firms still not GDPR compliant,” *PrivSec Report*, 22 July 2019, <https://gdpr.report/news/2019/07/22/almost-a-third-of-eu-firms-still-not-gdpr-compliant/>.

<sup>8</sup> Ann Cavoukian, “Privacy by design: the definitive workshop,” *Identity in the Information Society* 3, no. 2 (2010): 247–251.

software,<sup>9</sup> as it often requires significant changes to the entire system architecture. In this section, we describe some of the technology-enabled measures in Asia and highlight areas where individual privacy was not protected by the design.

### A. Prevention-Centric Technology-Assisted Measures

In this section, we describe what we call “prevention-centric” measures, in which members of the public (including arriving non-nationals) are required to comply with stringent public health measures in many facets of their lives. In these situations, technology is used to facilitate the government’s response, for example, by helping the authorities to trace contacts or to enforce quarantine and containment rules. Relative to containment, privacy may be a lower priority. Some of these technology-supported containment measures have been adopted in several jurisdictions in Asia, such as mainland China,<sup>10</sup> Taiwan,<sup>11</sup> and South Korea,<sup>12</sup> despite their potentially detrimental implications for privacy.

The first extreme measures in mainland China, the initial epicentre of Covid-19, included an application-supported system for contact tracing and quarantine enforcement. Initially introduced in Hangzhou, and powered by the Alipay payment system, a “health code” system was released to the general public to detect whether a person had been in close contact with anyone infected with the coronavirus.<sup>13</sup> The health-code system helped determine a resident’s travel restrictions, allowing the authorities to manage and enforce the quarantine. The system was quickly adopted in over 200 cities with the backing of the central and local governments and popular applications such as Alipay and the social media system WeChat. A resident registered the application with his or her name and ID number and answered a questionnaire about symptoms.<sup>14</sup> Then, a health status page was generated showing “green” (i.e., travel without restriction),

<sup>9</sup> Seda Gurses, Carmela Troncoso, and Claudia Diaz, “Engineering privacy by design,” *Computers, Privacy & Data Protection* 14, no. 3 (2011): 25.

<sup>10</sup> Law and Choon, “How China, South Korea and Taiwan.”

<sup>11</sup> See Chang and Lin, Chapter 3, this volume.

<sup>12</sup> See Chung and Lee, Chapter 16, this volume.

<sup>13</sup> Helen Davidson, “China’s coronavirus health code apps raise concerns over privacy,” *The Guardian*, 1 April 2020, <https://www.theguardian.com/world/2020/apr/01/chinas-coronavirus-health-code-apps-raise-concerns-over-privacy>; Paul Mozur, Raymond Zhong, and Aaron Krolik, “In Coronavirus fight, China gives citizens a color code, with red flags,” *New York Times*, 1 March 2020, <https://www.nytimes.com/2020/03/01/business/china-coronavirus-surveillance.html>.

<sup>14</sup> Kari Lindberg and Jinshan Hong, “People in China need a green light from Alipay App to move around country,” *Bloomberg*, 23 March 2020, <https://www.bloomberg.com/news/articles/2020-03-23/to-pass-go-in-china-you-need-a-green-light-from-alipay-app>. See also Chang and Lin, Chapter 3, this volume.



“yellow” (i.e., had contact with infected person and cannot travel), or “red” (i.e., confirmed or likely has virus and must undergo quarantine). A resident in quarantine also had to log their daily temperature and health status. A green health code was required to enter public spaces such as malls or restaurants, or to access public transportation.<sup>15</sup> The health-code system was developed through a public-private partnership.<sup>16</sup> An individual’s health status code was based on that person’s health and transportation data. However, the merger and aggregation of various department data posed a threat to individual privacy. Not only could the government pinpoint every location an individual had recently visited, but private companies working in collaboration with the government might also have access to that data.

Determined to not suffer similar devastation as the 2003 Severe Acute Respiratory Syndrome (SARS) pandemic, Taiwan swiftly rolled out decisive measures. Taiwan’s measures involved app-supported distribution of health equipment, GPS-enabled enforcement of quarantine, and amalgamation of travel and health data. A centrally managed rationing system was created to allocate the distribution of face masks.<sup>17</sup> Each adult could purchase up to nine masks every two weeks. Authorities recorded a person’s purchase history as each transaction required the real-name identification of the customer.<sup>18</sup> Additionally, a real-time map showing availability of masks was released to the public to communicate availability of masks.<sup>19</sup> To protect health workers from those who recently travelled and could possibly be infected, health and immigration databases were integrated to ensure doctors could access a confirmed patient’s recent travel history.<sup>20</sup> An “electric fence system” also allowed public health authorities to use technology to effectively enforce quarantine. If someone who was ordered to remain home attempted to leave, an alarm notified authorities who could quickly respond.<sup>21</sup> To ensure phones were not discarded, the authorities called a person multiple times each day. While interviews formed the basis for contact tracing, in situations where human contact tracing was impossible, mobile phone cell tower data was used to determine a patient’s recent movements.<sup>22</sup>

South Korea also deployed comprehensive strategies, which included public announcements of confirmed cases and location-based tracking for contact tracing, among other initiatives. For example, each traveller entering South

<sup>15</sup> Lindberg and Jinshan Hong, “People in China.”

<sup>16</sup> Lindberg and Jinshan Hong, “People in China.”

<sup>17</sup> Keoni Everington, “Taiwan’s new mask-rationing system kicks . . .,” *Taiwan News*, 4 February 2020, <https://www.taiwannews.com.tw/en/news/3870428>.

<sup>18</sup> See Chang and Lin, Chapter 3, this volume.

<sup>19</sup> Ngerng, “Taiwan’s Digital Response.”

<sup>20</sup> See Chang and Lin, Chapter 3, this volume.

<sup>21</sup> Law and Choon, “How China, South Korea and Taiwan.”

<sup>22</sup> See Chang and Lin, Chapter 3, this volume.

Korea had to install a “Self-Diagnosis App” on their smart phone.<sup>23</sup> Authorities could later rely on the app to monitor the traveller. To prevent people from accidentally leaving quarantine zones, GPS was used to track people in quarantine.<sup>24</sup> If a person left the quarantine area, an alarm was triggered. However, the GPS tracking app was not mandatory.

Despite South Korea’s lauded system of contact tracing, manually tracking the movements of a patient was not always possible. To ease the strenuous effort of contact tracing, authorities triangulated data across credit card records, mobile phone GPS, CCTV footage, and interviews.<sup>25</sup> The triangulation of data enabled authorities to determine with better accuracy the exact places and locations that a patient visited before diagnosis. Furthermore, apps developed by the private sector, such as “Corona 100m” and “Coronamap” provided users with data on proximity to and names of places infected persons had visited before testing positive.<sup>26</sup> These apps provided highly detailed information to the public regarding possible areas of virus exposure. The government also released, by automated text messages, information such as infected persons’ age and gender, neighbourhood, and recently visited places.<sup>27</sup> The information was intended to inform the public and facilitate individual decisions as to whether to get tested and/or undergo quarantine; however, it also created an opportunity for people to potentially identify infected persons, indicating the diminished priority of privacy during the pandemic.

## B. Privacy-Sensitive Technology-Assisted Measures

In contrast, what we call “privacy-sensitive” measures place more emphasis on privacy and are less restrictive and intrusive on residents. In Europe, for example, privacy agencies have stressed the importance of maintaining privacy in new technologies developed to combat Covid-19;<sup>28</sup> public health measures to

<sup>23</sup> “(Important) Installation of COVID-19 Self-diagnosis Mobile App when you visit Korea” Embassy of the Republic of Korea in the Republic of Kenya, 18 March 2020, [http://overseas.mofa.go.kr/ke-en/brd/m\\_10538/view.do?seq=761314](http://overseas.mofa.go.kr/ke-en/brd/m_10538/view.do?seq=761314); Law and Choon, “How China, South Korea and Taiwan.”

<sup>24</sup> Max Kim, “South Korea is watching quarantined citizens with a smartphone app,” 6 March 2020, <https://www.technologyreview.com/2020/03/06/905459/coronavirus-south-korea-smartphone-app-quarantine/>.

<sup>25</sup> “Coronavirus privacy: Are South Korea’s alerts too revealing?,” *BBC News*, 3 March 2020, <https://www.bbc.com/news/world-asia-51733145>.

<sup>26</sup> Law and Choon, “How China, South Korea and Taiwan.”

<sup>27</sup> “Coronavirus privacy.”

<sup>28</sup> “Statement on the processing of personal data in the context of the COVID-19 outbreak,” European Data Protection Board, 19 March 2020, [https://edpb.europa.eu/sites/edpb/files/files/news/edpb\\_statement\\_2020\\_processingpersonaldataandcovid-19\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/files/news/edpb_statement_2020_processingpersonaldataandcovid-19_en.pdf).

contain the pandemic should not excuse governments for encroaching on privacy and inadvertently harming individuals. In Asia, by contrast, Hong Kong, Singapore, and Thailand provide examples of less intrusive measures.

Hong Kong's mandatory fourteen-day quarantine requirement was enforced, in part, by a technology-assisted geofencing app. As noted elsewhere in this volume, all travellers arriving from abroad were required to be in quarantine to prevent the spread of the coronavirus.<sup>29</sup> To manage the large number of inbound travellers, authorities used a special tracking device. Instead of using GPS data to enforce home quarantine as in South Korea, Hong Kong provided each arriving traveller with a wristband displaying a unique Quick Response (QR) code.<sup>30</sup> Each traveller had to install an application and scan the QR code to pair it with the wristband. Once at home, the traveller would walk around their home to map their surroundings. The quarantine would subsequently be enforced using the wristband. This approach helped preserve privacy because location data was not used to track individuals. The wristband verified the location by analyzing signals in the surroundings to determine if someone was inside or outside their home. Although Hong Kong's approach minimized the risk of infringing on someone's location data, the wristband incurred negative reviews from users citing "poor usability."<sup>31</sup>

Similarly, Singapore's approach emphasized protecting privacy through the voluntary use of a contact-tracing app. An app called TraceTogether was developed to help contact tracing of the coronavirus,<sup>32</sup> using Bluetooth technology to connect with other phones. Since Bluetooth's range is limited by distance, only close contact would result in the app producing a connection between two phones. Establishing contact also took some time, so a short encounter would not register a connection. The app did not track phone numbers, and each phone was assigned an anonymous ID.<sup>33</sup> Any user who was confirmed to have Covid-19 could voluntarily grant the health authority rights to identify others who had been in contact with the person. However, the use of TraceTogether was not mandatory. Weeks after its release, only about 20 per cent of Singaporeans had downloaded the app, limiting its effectiveness for contact tracing.<sup>34</sup> Furthermore,

<sup>29</sup> See Ho and Cheung, Chapter 17, this volume.

<sup>30</sup> Heather Murphy, "14 Days with a quarantine tracker wristband: does it even work?," *New York Times*, 8 April, 2020, <https://www.nytimes.com/2020/04/08/world/asia/hong-kong-coronavirus-quarantine-wristband.html>.

<sup>31</sup> Claire Huang, "Coronavirus: Pandemic shines light on Hong Kong's monitoring woes," *The Straits Times*, 26 March 2020, <https://str.sg/JfFB>.

<sup>32</sup> Saheli Roy Choudhury, "Singapore says it will make its contact tracing tech freely available to developers," *CNBC*, 25 March 2020, <https://www.cnbc.com/2020/03/25/coronavirus-singapore-to-make-contact-tracing-tech-open-source.html>.

<sup>33</sup> Choudhury, "Singapore says."

<sup>34</sup> Aradhana Aravindan and Sankalp Phartiyal, "Bluetooth phone apps for tracking COVID-19 show modest early results," *Reuters*, 21 April 2020, <https://www.reuters.com/article/us-health-coronavirus-apps-idUSKCN2232A0>.

false positives and negatives raised serious concerns.<sup>35</sup> False positives might needlessly waste resources; false negatives could put even more people at risk of infection. Hence, arduous manual contact tracing was still necessary to identify individuals who might have been exposed.

Thailand required travellers from high-risk countries to self-quarantine and download a home quarantine app to facilitate monitoring and enforcement.<sup>36</sup> To improve contact tracing and protect health workers, an application, MorChana, was developed by a public-private partnership. MorChana used a combination of GPS and Bluetooth technology to track if users had visited a high-risk area.<sup>37</sup> Based on a user's history and real-time reports of new cases, a colour code was generated for the user. The tracking and colour code ensured that doctors were prepared when they saw patients, and people avoided areas that were high-risk. Users were anonymized, and no personal data was recorded except for a photo, which was stored on a user's own device.<sup>38</sup> Other sensitive information, such as the user's name, phone number, and national ID number, were not recorded. The government claimed that data records were automatically deleted after thirty days, and users were only asked to share records when contacted by authorities to conduct contact tracing.<sup>39</sup>

### 3. Privacy Concerns and Personal Data Protection Laws in Asia

These extraordinary emergency responses, however, led to significant social implications, including stigma from public disclosure of a person's details and social categorization. In South Korea, for example, some individuals who were identified as having tested positive were ridiculed and their moral character was assailed based on data revealing where they had been and who they had interacted with.<sup>40</sup> However, the impact of technology-assisted Covid-19 measures often extended beyond individuals to social groups within the community. For example,

<sup>35</sup> Jessica Morley et al., "Ethical guidelines for COVID-19 tracing apps," Comment, *Nature*, 28 May 2020, <https://www-nature-com.ezproxy.library.uvic.ca/articles/d41586-020-01578-0>.

<sup>36</sup> Komsan Tortermvasana, "Ministry unveils new quarantine app," *Bangkok Post*, 13 March 2020, <https://www.bangkokpost.com/business/1877654/ministry-unveils-new-quarantine-app>.

<sup>37</sup> Suchit Leesa-Nguansuk, "New virus app a powerful tool," *Bangkok Post*, 10 April 2020, <https://www.bangkokpost.com/tech/1897415/new-virus-app-a-powerful-tool>.

<sup>38</sup> "MorChana," Google Play, <https://play.google.com/store/apps/details?id=com.thaialert.app&hl=en>.

<sup>39</sup> Press Conference Presentation of MorChana Application, 10 April 2020, [https://www.eta.th/app/webroot/content\\_files/13/files/20200410\\_Mor\\_Chana\\_presentation\\_at\\_ETDA\\_rev.pdf](https://www.eta.th/app/webroot/content_files/13/files/20200410_Mor_Chana_presentation_at_ETDA_rev.pdf).

<sup>40</sup> Nemo Kim, "'More scary than coronavirus': South Korea's health alerts expose private lives," *The Guardian*, 6 March 2020, <https://www.theguardian.com/world/2020/mar/06/more-scary-than-coronavirus-south-koreas-health-alerts-expose-private-lives>.

in Thailand, social stigma and online shaming discouraged workers in high-risk areas from sharing their work and travel history, or led them to conceal possible infections, ultimately exposing others, including healthcare workers.<sup>41</sup>

Solove's taxonomy of privacy<sup>42</sup> provides a framework to understand the privacy harms emerging from the responses. They relate to personal data collection, processing, and dissemination, as well as invasion of privacy, as follows: *collection harm* arises from surveillance, interrogation requiring continuous monitoring of behaviours, and extensive collection of personal data that could track changes to individual behaviors; *processing harm* from the aggregation and identification of confirmed cases, potential secondary use of data for purposes other than initial purpose of collection, insecurity due to the potential mishandling of personal, prolonged retention of data after the infection disappears, and involuntary processing of personal data; *dissemination harm* from the unauthorized disclosure and data leakage which exposes a user's identity and private conversation; and *invasion harm* caused by intrusion on an individual's daily activities and being closely monitored. Invasion harm also includes government interference via decision-making with respect to an individual's personal life. These privacy harms are important considerations, as many regulators in Asia and elsewhere have sought to address privacy harms through personal data protection (PDP) laws.<sup>43</sup> These laws provide a rights-based approach for protecting personal data from exploitative behaviour on the part of governments and businesses while ensuring the society benefits from the free flow of data.

PDP laws prescribe obligations on those processing personal data<sup>44</sup> that are often based on the principles of fairness, transparency, and accountability—principles promoted by the Organisation for Economic Co-operation and Development in its 1980 global *Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data*<sup>45</sup> and by the European Union through its regional GDPR<sup>46</sup> framework. Specifically, organizations must minimize processing to informed purposes and provide individual control through consent, and the right to access, modify, update, and object to data security, and to access

<sup>41</sup> “New coronavirus patient concealed return from Japan,” *Bangkok Post*, 26 February 2020, <https://www.bangkokpost.com/thailand/general/1866099/new-coronavirus-patient-concealed-return-from-japan>; “สสจ.ยะลา ยันหมอก่อเดร์ไม่ป่วยโควิด ชาวบ้านที่ไปคลินิกรายงานตัวครบแล้ว [Doctor and villagers who visited the clinic reported to Yala Provincial Public Health Office],” *Thai Rath*, 27 April 2020, <https://www.thairath.co.th/news/local/south/1831183> [title translated].

<sup>42</sup> Solove, “The meaning and value of privacy.”

<sup>43</sup> “Data Protection and Privacy Legislation Worldwide,” UN Conference on Trade and Development, [https://unctad.org/en/Pages/DTL/STI\\_and\\_ICTs/ICT4D-Legislation/eCom-Data-Protection-Laws.aspx](https://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation/eCom-Data-Protection-Laws.aspx).

<sup>44</sup> “Data Protection and Privacy Legislation Worldwide.”

<sup>45</sup> Graham Greenleaf, *Asian Data Privacy Laws: Trade and Human Rights Perspectives* (Oxford: Oxford University Press, 2014).

<sup>46</sup> “Complete guide to GDPR compliance.”

remedial actions in case of breach. However, these rights are not absolute: they need to be balanced with the rights and freedoms of others, larger public interests, and legitimate business interests. Variations of the PDP laws in Asia are often reflected in the scope of applicability to government and business activities; definitions of sensitive data, data controllers, and data processors; enforcement procedures; and the severity of penalties. New obligations introduced in the GDPR, such as privacy by design, data protection impact assessment (DPIA) for high-risk processing, and mandatory breach notification, have influenced the 2019 Indian Bill,<sup>47</sup> the 2019 Thai PDP law,<sup>48</sup> and proposed amendments to Singapore's<sup>49</sup> and South Korea's<sup>50</sup> PDP laws intended to meet EU requirements for cross-border data transfers. Technology-assisted measures taken during the Covid-19 crisis should either comply with privacy-preserving obligations or fall within the exemptions provided by PDP laws. Those exemptions require a demonstration of the necessity and proportionality of the measures on the grounds of public health and safety; compliance with other regulations; empowering authorities to perform their functions; ensuring contractual performance; or protecting legitimate business interests. Still, the legality of some of these measures remains open to challenge.

#### 4. Trade-offs: Privacy Considerations and Crisis Responses

In scrambling to find effective measures for responding to the Covid-19 pandemic, governments turned to just-in-time (i.e., quickly responding to change and uncertainty instead of immense upfront planning) use of supporting technologies to contain the spread of the virus and save more lives. In ordinary times, governments might be hesitant to trade off privacy concerns for minimal increases in convenience or productivity,<sup>51</sup> but in a pandemic, they might be willing to sacrifice privacy for public health and safety. Yet these trade-offs occur in a context where broader issues of trust and contesting cultural perspectives influence legal interpretations of the necessity and intrusiveness of each measure. For example, sustained trust in the legal system or governments and software

<sup>47</sup> See Tremblay and George, Chapter 12, this volume.

<sup>48</sup> Graham Greenleaf and Arthit Suriyawongkul, "Thailand—Asia's Strong New Data Protection Law," *Privacy Laws and Business International Report* 1, no. 3–6 (24 September 2019): 160, <https://ssrn.com/abstract=3502671>.

<sup>49</sup> *Personal Data Protection Act 2012*, No. 26 of 2012 (Singapore).

<sup>50</sup> "Personal Data Protection Laws in Korea," Laws & Policies, Ministry of the Interior and Safety, [https://www.privacy.go.kr/eng/laws\\_policies\\_list.do](https://www.privacy.go.kr/eng/laws_policies_list.do).

<sup>51</sup> Jennifer Valentina-DeVries et al., "Your Apps Know Where You Were Last Night, and They're Not Keeping It Secret," *New York Times*, 10 December 2018, <https://www.nytimes.com/interactive/2018/12/10/business/location-data-privacy-apps.html>.

providers may reduce perceived risks of these measures. Other factors include the pre-existing privacy regime before the pandemic, the political structure of the government (e.g., whether one-party, multi-party, or otherwise), and the relative importance of individual rights protections relative to other public goods such as efficiency (or now, public health).

Further, it can be surmised that a complex and layered set of cultural factors are also in operation in each country's responses recorded in this chapter, considering the interacting levels of culture spanning global, national, organizational, group, and individual.<sup>52</sup> Tony Clear adds to this set the notion of professional culture,<sup>53</sup> with software developers having a commonality through their professional education and shared practices and the Association for Computing Machinery's code of ethics<sup>54</sup> operating at a global level. The relative weighting of the community good (resulting in benefits for the many) versus the individual right to privacy will vary as national cultural dimensions such as those drawing upon Hotstede's distinctions between *collectivism* versus *individualism* and the role of *power distance*, *assertiveness*, and varying degrees of *tolerance of ambiguity*<sup>55</sup> become operative in a global setting. In this section, we use Solove's framework of harms<sup>56</sup> to analyze three sets of trade-offs involved in the rapid development and deployment of technology during a pandemic.

### A. Adequate Security Protection vs. Timely and Innovative Responses

Just-in-time adoption of new or existing software-based technology to combat the virus and ensure normality at work results in *dissemination* harm, as these software solutions may not have adequate security protection for users. Ideally, technologies that may include the processing of sensitive data (e.g., the personal data of children or data on individual location or behaviour) should be thoroughly assessed before launch. However, given the urgency of the pandemic, security and accuracy may be offset by the need to quickly adopt solutions that facilitate the continuity of daily life while following social-distancing and stay-at-home guidelines. For example, online learning software vendors launched

<sup>52</sup> K. Leung et al., "Culture and international business: recent advances and their implications for future research," *Journal of International Business Studies* 36 (2005): 357–378.

<sup>53</sup> T. Clear, "Exploring the notion of 'cultural fit' in global virtual collaborations," *ACM Inroads* 1, no. 3 (2010): 58–65, <http://doi.acm.org.ezproxy.aut.ac.nz/10.1145/1709424.1709428>.

<sup>54</sup> D.W. Gotterbarn et al., *ACM Code of Ethics and Professional Conduct*, 2018, accessed 9 June 2020, <https://www.acm.org/code-of-ethics>.

<sup>55</sup> Sophie Cockcroft and Saphira Rekker, "The relationship between culture and information privacy policy," *Electronic Markets* 26, no. 1 (2016): 55–72.

<sup>56</sup> Solove, "The meaning and value of privacy."

products and new features to meet business demands without carefully considering privacy for users. In particular, Zoom gained immense popularity as countries began social distancing with family gatherings,<sup>57</sup> classes,<sup>58</sup> and even cabinet meetings.<sup>59</sup> However, Zoom has had a series of pre-existing vulnerabilities and inadequate security measures that led to a plethora of *dissemination harms*, including harassment<sup>60</sup> and disclosure of sensitive information.<sup>61</sup> Furthermore, large volumes of sensitive data may also attract malicious actors to exploit existing lax security measures in software,<sup>62</sup> and the technologies facilitating large-scale collection and processing of data may be subject to misuse.<sup>63</sup> The question for regulators moving forward is whether a society's demands for normalcy in a pandemic justifies under-studied risks, such as inadequate safeguards and threats to privacy, introduced by newly adopted technologies.

## B. Accurate Data-Driven Decision-Making vs. Timely Use

Many of the technologies we identified earlier in the chapter involve automated data collection and processing as part of the government's public health response. However, inaccurate data and calculations can lead to *data-processing* and *invasion* harms when erroneous decisions are taken that severely affect people's lives. For example, the colour health codes used in Mainland China, based on transportation and location data, enabled fast screening of people using public transportation or entering public spaces.<sup>64</sup> But the system was quickly designed and developed<sup>65</sup> and raised questions as to how colour codes were calculated, the accuracy of the methods, and the information

<sup>57</sup> Carman, "Why Zoom became so popular."

<sup>58</sup> Michael Liedtke, "Zoom booms as pandemic drives millions to its video service," *AP News*, 2 June 2020, <https://apnews.com/0601b588b87581c0c1fb83f8c03595c4>.

<sup>59</sup> Boris Johnson, Twitter, 31 March 2020, <https://twitter.com/BorisJohnson/status/1244985949534199808>.

<sup>60</sup> NHL Public Relations, Twitter, 3 April 2020, accessed 11 June 2020, [https://twitter.com/PR\\_NHL/status/1246218023557632001](https://twitter.com/PR_NHL/status/1246218023557632001).

<sup>61</sup> Sam Whitney, "How to Keep Your Zoom Chats Private and Secure," *Wired*, <https://www.wired.com/story/keep-zoom-chats-private-secure/>.

<sup>62</sup> Lily Hay Newman, "The Covid-19 Pandemic Reveals Ransomware's Long Game," *Wired*, 28 April 2020, <https://www.wired.com/story/covid-19-pandemic-ransomware-long-game/>.

<sup>63</sup> Daniel Newman, "Privacy Pros and Cons as Apple and Google Look into Using Data to Trace COVID-19," *Forbes*, 22 April 2020, <https://www.forbes.com/sites/danielnewman/2020/04/22/privacy-pros-and-cons-as-apple-and-google-look-into-using-data-to-trace-covid-19/>; Shoshana Zuboff, *The age of surveillance capitalism: The fight for a human future at the new frontier of power* (Profile Books, 2019).

<sup>64</sup> Mozur, Zhong, and Krolik, "In Coronavirus Fight."

<sup>65</sup> Liu Zhang and Junyao Tang, "从杭州“跑”向全国200个城市 还原健康码诞生记 [From Hangzhou to 200 cities, the origins of the Health Code App]," *Zhejiang News*, 16 March 2020, <https://zj.zjol.com.cn/news/1411858.html> [title translated].



used to determine risks. Reports of individuals living in the same household for weeks receiving different codes<sup>66</sup> could be due to erroneous calculations. Although app users are able to notify authorities of any inaccuracies so that errors can be rectified,<sup>67</sup> similar to privacy regulations such as GDPR where users have the right to correct inaccuracies in personal data,<sup>68</sup> transparency in automated decision-making has been lacking as erroneous codes can restrict people's travel without clear justification.<sup>69</sup> Regulators must therefore decide whether relying on automated processing and profiling to make decisions on quarantines and restrictions on movement justifies the risk to individuals and communities arising from such inaccuracies.

### C. Voluntary Disclosure of Personal Data vs. Public Health Interest

We have also seen how some governments have implemented technologies that involve the mandatory and automated disclosure of personal data, collected without consent, in the interest of public health. These efforts to predict and trace the spread of the virus can lead to *collection* harm by collecting individual personal data and *processing* harm by aggregating data that might inadvertently identify individuals. Aggregating data can be beneficial, enhancing the ability of public health officials and members of the public to predict the spread of the virus. For instance, Singapore's Tracing Together application could supplement an infected person's memory of who that person had been in contact with;<sup>70</sup> Thailand's MorChana application claims to protect assigned users with colour codes based on infection risks and to protect healthcare workers and others from those who conceal their travel to high-risk areas.<sup>71</sup> These applications were voluntarily installed, and individuals were invited to help by downloading the application and donating their personal information to produce more accurate and effective results.<sup>72</sup> However, in an effort to more effectively protect public health, countries such as South Korea triangulated

<sup>66</sup> Nicole Jao, David Cohen, and Chris Udemans, "How China is using QR code apps to contain Covid-19," *TechNode*, 25 February 2020, <http://technode.com/2020/02/25/how-china-is-using-qr-code-apps-to-contain-covid-19/>.

<sup>67</sup> Mozur, Zhong, and Krolik, "In Coronavirus Fight."

<sup>68</sup> "Complete guide to GDPR compliance."

<sup>69</sup> Mozur, Zhong, and Krolik, "In Coronavirus Fight."

<sup>70</sup> "How does TraceTogether complement current contact tracing efforts?," Why TraceTogether is needed, TraceTogether, accessed 4 May 2020, <http://tracetogogether.zendesk.com/hc/en-sg/articles/360044785014>.

<sup>71</sup> Leesa-Nguansuk, "New virus app a powerful tool."

<sup>72</sup> Yip Wai Yee, "More need to use contact tracing app for it to be effective," *The Straits Times*, 1 May 2020, <https://str.sg/JQiR>.

user data without consent from sources, including credit card history and surveillance footage and released sensitive health data to the public, even though some individuals could use the personal data to harass and stigmatize others.<sup>73</sup> Moreover, some technology could be misused by prolonging public and private surveillance after the threat of the pandemic has faded. Ultimately, policy-makers must decide whether public health gains from involuntary disclosure of health-related personal data during a pandemic outweighs the importance of maintaining some facets of privacy by requiring voluntary disclosure of personal data.

## 5. Conclusion

Privacy is important but also inherently difficult to protect in the development and implementation of software. While the European GDPR laws raised awareness of the importance of privacy, privacy protections are more or less stringent in other jurisdictions. The Covid-19 pandemic has shifted the relative balance from privacy to other public goals, especially the goal of containing a pandemic. It has therefore challenged governments to return to the policy-making table to consider afresh the complex policy challenges in this dynamic and fast-shifting context. This chapter has provided a survey of the technology-assisted responses to the pandemic in several parts of Asia in light of the legal principles governing those responses and the trade-offs involved. What is clear, however, is that one size does not fit all, and the relative balance of privacy and public health will vary considerably according to the context. The Covid-19 pandemic is likely to have a lasting impact not only on the way this balance is struck, but possibly on the way privacy is regarded.

Until a vaccine is developed, technology-assisted contact tracing will continue to be a key part of any successful containment strategy in addition to social distancing and large-scale testing. As this chapter illustrates, the pandemic will have long-term implications for privacy, beyond the pandemic itself. The persisting effects of the technologies described in this chapter should be considered carefully when designing and deploying them to address important but short-term objectives. In May 2020, the ACM Europe Technology Policy Committee released a set of essential contact-tracing application principles and practices,<sup>74</sup> of which privacy is a major consideration. The Committee urges that, although

<sup>73</sup> “Coronavirus privacy.”

<sup>74</sup> “Statement on essential principles and practices for COVID-19 contact tracing applications,” The Europe Technology Policy Committee of the ACM, 5 May 2020, <https://www.acm.org/binaries/content/assets/public-policy/europe-tpc-contact-tracing-statement.pdf>.

at this time, known contact tracing apps cannot fully preserve individual privacy and anonymity, these principles and practices need to be rigorously applied in the development and deployment of any contact tracing technology that might be used during the Covid-19 pandemic in the interests of technical efficacy, public trust, and public health. We endorse this recommendation.

# Singapore: Technocracy and Transition

*Maartje De Visser\* and Paulin Straughan\*\**

## 1. Introduction

Singapore is an island state about two-thirds the size of Hong Kong, its usual comparator. Like Hong Kong, it is one of the most densely populated countries in the world, with 5.7 million inhabitants, including 4 million citizens and a half million permanent residents. Many households comprise intergenerational families. The resident population includes some 300,000 blue-collar migrant workers, most of whom are housed in purpose-built mega-dormitories or converted factories on the fringes of the island or close to labour-intensive industries. Singapore is an economic powerhouse, and its economy is one of the most open in the world, a legacy of its colonial beginnings as a free port. It has no natural resources, relying heavily on imports. It also has a reputable healthcare system that attracts medical tourists. Singapore's workforce is highly skilled and educated, and citizens' growing aversion to low-skilled jobs has contributed to its reliance on foreign labour to fill those gaps. Politically, Singapore is dominated by a single political party, the People's Action Party (PAP), whose longevity has often been attributed to its image of incorruptibility and technocratic efficiency. Its economic openness makes Singapore vulnerable to external contagion. At the same time, its political conditions and territorial compactness enable it to draw up and enforce wide-ranging measures expeditiously. The story of Covid-19's arrival and subsequent spread in Singapore showcases all of these elements at play.

Singapore was probably better prepared than most, having developed a pandemic playbook seventeen years in the making since the 2003 Severe Acute Respiratory Syndrome (SARS) epidemic.<sup>1</sup> Indeed, it managed the early stages of the Covid-19 outbreak very well, keeping infection rates low without significantly disturbing public life. Yet as the number of cases rose rapidly from

\* Associate Professor, School of Law, Singapore Management University.

\*\* Professor of Sociology (Practice), Singapore Management University (<https://orcid.org/0000-0003-4676-7138>).

<sup>1</sup> On which, see Tan Chorh Chuan, "SARS in Singapore: key lessons from an epidemic," *Annals of the Academy of Medicine Singapore* 35, no. 5 (2006): 345; Chua Mei Hoong, *A defining moment: How Singapore beat SARS* (Singapore: Institute of Policy Studies, 2004).

mid-March onward, it was clear that adjustments were necessary. The need to pivot, and in an agile fashion, is not alien to the establishment. On the contrary, there is a keen political willingness, almost amounting to a creed, to learn from previous experiences—at home as well as abroad—to improve governance.<sup>2</sup> A study of Singapore’s response to Covid-19 therefore yields important insights into how any future emergencies of a public health nature or otherwise could be handled.

We suggest that the government’s strategy revolved around the two poles of technocratic and expedient governance, on the one hand, and social solidarity, targeted at vulnerable or weaker segments of society, on the other. A crucial factor in implementing this dual strategy is Singapore’s smallness, in spatial and demographic terms, meaning that there are natural limits to emulation by others. At the same time, Singapore’s approach was not flawless. In particular, the wildfire-like spread of the virus in migrant workers’ dormitories emerged as an embarrassing blind spot, prompting soul-searching as to their treatment. Other serious Covid-19-related challenges remain. The most significant of these are managing the narrative to preserve high levels of government trust and a further reckoning with the stark socio-economic disparity exacerbated by the crisis. The latter in particular, we suggest, may be a harbinger of wider socio-political change in Singapore which will continue to unfold long after the immediate health emergency has passed.

## 2. Covid-19 in Singapore

The evening before Singapore announced its first Covid-19 case in January 2020, the government created a Multi-Ministerial Task Force on Covid-19 (MTFC) to tackle the looming crisis.<sup>3</sup> The first batch of cases were all imported, leading to strict border control measures. Internally, comprehensive contact-tracing teams and procedures were quickly and effectively rolled out. In parallel, the Ministry of Health (MOH) introduced precautionary administrative measures to restrict the movement of those suspected of having Covid-19.

The first local cluster of cases on 4 February and the spectre of community spread prompted the government to change the country’s Disease Outbreak Response System (DORSCON) level from yellow to orange on 7 February. This led to a suite of safe distancing and precautionary measures targeted at the general

<sup>2</sup> Jon Quah, “Why Singapore works: five secrets of Singapore’s success,” *Public Administration and Policy: An Asia-Pacific Journal* 21, no. 1 (2018): 14–16.

<sup>3</sup> Multi-Ministry Taskforce on Wuhan Coronavirus, “Terms of Reference and Composition,” Ministry of Health, 27 January 2020, <https://www.moh.gov.sg/docs/librariesprovider5/default-document-library/multi-ministry-taskforce-on-wuhan-coronavirus-and-tor---final.pdf>.

public. Internationally, Singapore's robust contact tracing and targeted isolation strategy earned it many plaudits, including from the WHO.<sup>4</sup> Domestically too, the government was seen as managing the first wave of infections well.<sup>5</sup>

Singapore's fortunes changed in the latter half of March, mainly following the return of permanent residents and Singapore citizens abroad, resulting in a second wave of imported infections. The sudden closure of Malaysia's borders also led to an influx of Malaysians, 300,000 of whom work or study in Singapore. While additional containment measures were rolled out, they did not significantly disrupt public life, with children still able to go to school and adults to work.

The beginning of April marked a third volta. With imported cases tapering off, it became clear that local transmission was happening, with a concerning, steady rise in unlinked cases among the population.<sup>6</sup> This brought about a paradigm shift in managing the outbreak. On 3 April, the prime minister announced a month-long partial lockdown (called a "circuit breaker"), severely curbing the scope for local movement and contact, though with exceptions for essential services.<sup>7</sup> With unlinked community cases persisting, the period was extended until early June while social-distancing measures were tightened.<sup>8</sup>

Almost immediately after the circuit-breaker measures were announced, it became apparent that the virus had also begun to spread to the country's foreign worker dormitories. The design of their living quarters, where they "are packed like sardines,"<sup>9</sup> meant that the infection spread quickly. The dormitories became the principal source of Covid-19 cases, adding hundreds to the overall tally on a daily basis. Strict isolationist policies and comprehensive testing were implemented to bring this aspect of Singapore's outbreak under control. To avoid any flare-ups among the general public in the aftermath of the circuit breaker, the government opted for the same gradual approach that led to the lockdown. Public life should restart slowly, with movement restrictions

<sup>4</sup> "WHO Director-General's opening remarks at the media briefing on COVID-19," WHO, 9 March 2020.

<sup>5</sup> Dale Fisher, "Why Singapore's coronavirus response worked – and what we can all learn," *The Conversation*, 18 March 2020.

<sup>6</sup> Rising from six on 21 March to eight on 25 March, fourteen on 28 March, and eighteen on 31 March.

<sup>7</sup> "PM Lee Hsien Loong on the COVID-19 situation in Singapore on 3 April 2020," Prime Minister's Office, 3 April 2020, available at <https://www.pmo.gov.sg/Newsroom/PM-Lee-Hsien-Loong-on-the-COVID19-situation-in-Singapore-on-3-April-2020>.

<sup>8</sup> "PM Lee Hsien Loong on the COVID-situation in Singapore on 21 April 2020," Prime Minister's Office, 21 April 2020, <https://www.pmo.gov.sg/Newsroom/PM-Lee-Hsien-Loong-address-COVID-19-21-Apr>.

<sup>9</sup> Tommy Koh, "Comment on 'Workers describe crowded, cramped living conditions,'" Facebook, 5 April 2020, <https://www.facebook.com/photo.php?fbid=2477016875849251&set=a.1758071344410478&type=3&theater>. Mr. Koh is an ambassador-at-large with a long history in government service.

being lifted at substantial intervals, alongside an amped-up contract-tracing and testing regime.

Statistically, the number of infections by end of May stood at some 34,000. Dormitory residents accounted for almost 95 per cent of this figure. This also helps to explain the country's low Covid-19 fatality number of twenty-three as of May 2020: most of those who contracted the virus were young, able-bodied foreign workers and not in the vulnerable risk categories (such as the elderly or those with underlying health issues).

### 3. Legal and Regulatory Responses

Singapore's steps to contain the spread of the virus and manage its socio-economic effects have been deliberately targeted but also holistic in outlook. Its leaders tend to be established professionals with strong track records in their area of expertise before venturing into politics. Many are recruited from the senior ranks of the administrative service, so are able to reduce or bridge the gap between political leadership and the civil service, translating into effective policy formulation and implementation.

#### A. The Multi-Ministry Taskforce on Covid-19

The formation of the MTFC marked the beginning of Singapore's official response to the crisis. The cabinet-level force is notable for two reasons. First, it used a "Whole-of-Government" approach, cutting across ministerial lines,<sup>10</sup> that avoids blinkered policy-making by individual ministries. Secondly, in its composition, the taskforce was made up entirely of younger members in the cabinet. This was an apparent nod to what is referred to as the Fourth Generation of political leaders (4G), giving them the limelight and opportunity to lead, a safe and shrewd calculation. Safe since Singapore has had seventeen years since SARS to draw up a policy playbook for a health crisis;<sup>11</sup> shrewd since the PAP had spent the preceding year preparing for political transition and elections.

<sup>10</sup> Cf. *Public Sector (Governance) Act 2018* [no. 5 of 2018].

<sup>11</sup> "PM Lee Hsien Loong's doorstep interview with local media at National Centre for Infectious Diseases," Prime Minister's Office, 31 January 2020, available at <https://www.pmo.gov.sg/Newsroom/PM-Lee-Doorstop-Interview-at-NCID>.

## B. Use of Non-emergency Powers to Deal with the Pandemic

Singapore has a ready supply of administrative levers to manage a public health crisis, including specific emergency powers in primary legislation such as the Infectious Diseases Act (IDA).<sup>12</sup> To the extent that new rules were required, the PAP's parliamentary supermajority meant that the developing crisis could be tackled through ordinary legislative processes and instruments. For example, the *Covid-19 (Temporary Measures) Act* (CMTA)<sup>13</sup> was read, debated, and passed by Parliament in a single day. There was no perceived need to use the Constitution's emergency clause. Nor would a formal proclamation of a (health) emergency have been politically desirable, since the corollary would have been the empowerment of the president with important governing powers at the expense of the cabinet.<sup>14</sup>

## C. Travel Restrictions and Border Controls

The first wave of infections was imported, so the initial responses targeted foreigners in the form of travel restrictions and border controls. In January, health screenings of all Chinese nationals were carried out at entry points.<sup>15</sup> By the end of that month, Singapore had closed its border to all travellers (other than Singaporeans and local pass-holders) who had visited mainland China during the fortnight preceding their intended arrival. These travel restrictions were swiftly extended to all new Covid-19 hotspots outside China and eventually to all short-term visitors and also for transit. These measures are not unique to Singapore.<sup>16</sup>

## D. Confinement Measures

While the Covid-19 outbreak was confined to a small number of foreign countries, citizens and long-term pass-holders were advised against travelling to these areas unless absolutely necessary. Those returning from those countries were subject to confinement measures to limit the risk of community spread, initially through the imposition of the Leave of Absence (LOA). While

<sup>12</sup> *Infectious Diseases Act* (Cap 137, Rev. Ed. 2003).

<sup>13</sup> *COVID-19 (Temporary Measures) Act 2020* (No. 14 of 2020).

<sup>14</sup> *Constitution of the Republic of Singapore*, art. 150(2).

<sup>15</sup> The MOH website has a comprehensive repository with past press releases and a micro-site with all Covid-19 statistics: <https://www.moh.gov.sg/covid-19/situation-report>.

<sup>16</sup> See also Neo and Lee, Chapter 6, this volume.



on LOA, individuals were expected to remain at home and limit interactions with those outside their household but could venture out for daily necessities. Simultaneously, the authorities imposed Quarantine Orders (QO) on all with recent travel history to Hubei Province, the origin and epicentre of the outbreak, requiring them to report to a designated medical or quarantine facility and remain there under armed guard for fourteen days.

As the virus spread, so too did the reach and intensity of confinement measures. The LOA was superseded by the Stay-Home Notice (SHN), which prevents those served it from leaving their residence or entertaining visitors (usually for fourteen days). By mid-February, anyone returning to Singapore from mainland China was served an SHN, with Japan, Switzerland, the United Kingdom, and ASEAN added to the list in the following weeks. Faced with a second wave of infections, the government imposed a blanket SHN on returning citizens and long-term pass-holders. At its peak, more than 6,000 SHN were issued in a single day, with overwhelming compliance rates. The same was true of QO. The handful of breaches were vigorously enforced,<sup>17</sup> with details of the offenders reported in the media<sup>18</sup> and occasionally referenced in ministerial interventions,<sup>19</sup> presumably for deterrent effect.

### E. Testing and Contact Tracing

To assist in the early detection of Covid-19 cases, Singapore re-activated some 1,000 general practitioners, mainly in the country's most densely populated housing estates, through a network of designated Public Health Preparedness Clinics (PHPC).<sup>20</sup> When operating in their PHPC capacity, GPs provided their services at heavily subsidized prices, especially for the elderly. The policy aim was to entice this high-risk group to see a doctor as soon as they felt unwell, with the doctor being legally obliged to notify the government on suspicion or diagnosis of the virus.<sup>21</sup>

From the outset, the government also invested in a meticulous process of domestic contact tracing. Police assistance was regularly sought to obtain

<sup>17</sup> Those violating an SHN or QO could be fined up to SGD 10,000 and/or incarcerated for up to six months with a possible doubling of penalties for repeat offenders: *Infectious Diseases (COVID-19 – Stay Orders) Regulations 2020*, S 182/2020, R. 3(3).

<sup>18</sup> E.g., Shaffiq Alkhatib, "Man who breached Covid-19 stay-home notice to eat *bak kut teh* convicted; DPP argues for 10- to 12-week jail term," *The Straits Times*, 16 April 2020; Cara Wong, "Security officer among 3 accused of breaching stay-home notice," *The Straits Times*, 14 May 2020.

<sup>19</sup> Tee Zhuo, "Parliament: Those who flout Covid-19 stay-home notices will be investigated and charged, says Shanmugam [minister for home affairs and law]," *The Straits Times*, 25 March 2020.

<sup>20</sup> This network had previously been used during the H1N1 outbreak.

<sup>21</sup> *IDA*, s. 6(1).

surveillance footage, and army units were mobilized to contribute manpower to contact-tracing teams. Testing was initially selective, covering only those contact-traced or with severe respiratory symptoms. In the wake of the end of the circuit breaker, the government ramped up its mass-testing capacity, giving priority to residents and staff in nursing homes, front-line healthcare workers, and those in essential services.

## F. Safe-distancing Measures

To pre-empt community spread, MOH announced safe-distancing guidelines in early February, initially targeting vulnerable segments of society, but expanding them to the population at large when the risk level was increased to DORSCON Orange. Coinciding with the second wave of infections, tighter social-distancing measures were introduced. Employers were instructed to implement telecommuting arrangements; public events were capped and later suspended altogether; bars and clubs were closed; and those public venues that could continue to operate—such as malls, supermarkets, restaurants, and hawker centres—had to ensure distancing between unrelated patrons.

Many of these measures were initially guidelines without legal force (except regulated sectors like schools, preschools, and eldercare facilities for which the sectoral regulators can make legally binding orders), but they were largely followed. This may be attributed to a strong sense of trust in the government, particularly in the management of infectious diseases given the earlier experience with SARS and H1N1. A formal legal basis for safe distancing and closures of public spaces came only on 26 March with the *Infectious Diseases (Measures to Prevent Spread of Covid-19) Regulations 2020*.

## G. Mask Advisories

The initial advice from MOH in late January to members of the public was to don a mask only if they were feeling unwell, mainly to preserve supplies for front-line medical workers. Political leaders led by example and were observed in public spaces without masks. By early April, the ministry revised its position based on then-available evidence to encourage everyone to wear a mask when outside.<sup>22</sup> Mask-wearing became mandatory mid-month; non-compliance attracted a fine of SGD 300 and possibly imprisonment for repeat offenders. To enable

<sup>22</sup> Exemptions apply for those engaged in vigorous physical activity and children below six years.

everyone to heed this requirement, the government organized successive mask-distribution exercises.

## H. Reliance on Technology

From early on in the outbreak, the government deployed technology to aid its containment efforts. Government-sanctioned apps were made available to facilitate contact tracing or to inform the public about crowd-density levels at high-traffic public spaces.<sup>23</sup> During the circuit breaker, the OneServiceApp (a local government app used to report issues of waste disposal or cleaning services in public housing estates) was updated to enable reporting by fellow citizens where safe distancing was not being practised.

To improve community surveillance and facilitate contract tracing, a new digital system called SafeEntry was introduced in May 2020. Individuals would log their arrival and departure before being allowed to enter or leave workplaces, schools, malls, supermarkets, and other venues, entering their name, ID, and phone number in the SafeEntry system. Unlike the robust discussion in the West on this issue, privacy concerns were not earnestly raised nor seen to trouble the public in Singapore.<sup>24</sup> This could be symptomatic of the country's historical social compact in favour of collective safety and security.

## I. "Circuit Breaker"

When the incremental tightening of containment measures became insufficient to contain the local spread of Covid-19, the government moved to a quasi-lockdown. Under the circuit breaker, taking effect on 6–7 April, all schools, non-essential businesses, and workplaces as well as attractions, playgrounds, and beaches were shuttered.<sup>25</sup> Members of the public were instructed to stay at home and refrain from all physical interactions with those not in households, including parents, grandparents, or children, staying elsewhere. With the exception of essential services workers, going out was permitted only to purchase groceries and other basic items or to exercise in the immediate vicinity of one's home.

The statutory basis for the new slate of containment rules was provided by the CMTA, whose adoption was timed to match the start of the circuit breaker. This

<sup>23</sup> For an overview of Covid-19-related electronic resources, see <https://www.gov.sg/article/covid-19-resources>.

<sup>24</sup> See further Li, Phusamruat, Clear, and Damian, Chapter 14, this volume.

<sup>25</sup> Lee, "COVID-19 situation on 3 April" (n. 7).

Act delegates to the health minister the power to issue “control orders,” breaches of which can attract significant financial penalties and/or a custodial sentence.<sup>26</sup> Control orders can limit individuals’ movement or inter-personal contact; close or restrict access to premises and facilities; impose conditions on the duration, manner, or scale of business operations and workplaces; or prohibit or limit the involvement in events or gatherings. The first set of control orders took effect on the day that the CMTA was adopted.

Breaches of the CMTA-based safe-distancing measures were initially handled with a velvet glove. The government’s savvy public relations machinery kicked in, and an information campaign was waged to educate the public on the new social “dos and don’ts.” Yet from the outset, there was small but significant resistance to the rules. Enforcement officers issued 7,000 written “advisories” (with no legal sanction) on the first day and another 3,000 the day after, both mostly in Singapore’s more densely populated public-housing suburbs. Fines began to be issued, with police assistance required in about two dozen cases. With the rising need for enforcement action, coupled with the persistence in community spread, the government announced on 11 April that first-time offenders would immediately be fined SGD 300; repeat offenders, SGD 1,000.<sup>27</sup> This policy was extended to failing to wear a mask in public once it became compulsory.

The stricter enforcement policy was largely effective, with only a few violations reported. Several of these involved the elderly, for whom forced distancing has contributed to greater social isolation. While those who are tech-savvy could still “meet” in cyberspace, many of Singapore’s older generation are unable to leverage technology to keep in touch with family and friends, prompting them to disregard the strict rules prohibiting social mixing between households.

## J. Foreign Workers

Once realization dawned that migrant dormitories were a fertile breeding ground for Covid-19 cases, a dedicated inter-agency task force was set up to handle all facets of this outbreak, consistent with the MTFC logic. Massive testing was conducted to understand the scale and seriousness of the infections in the various dormitories, followed by strict segregation measures. Those with high numbers of cases were gazetted as isolation areas, preventing all residents—healthy or otherwise—from leaving for any reason. All necessary medical support and

<sup>26</sup> Up to SGD 10,000 and/or six months’ imprisonment and up to SGD 20,000 and/or twelve months, respectively: *CMTA*, s. 37(4).

<sup>27</sup> “Stiffer penalties for breach of safe distancing measures from 12 April 2020,” Ministry of the Environment and Water Resources, 11 April 2020.

testing was organized on-site. The government ordered employers to continue to pay affected migrant workers, providing rebates to help them manage their finances. To avoid a recurrence of the dormitory outbreak, healthy and recovered workers were separated from infected workers, confined to specially designated blocks or moved out of the affected dormitories altogether.

### K. Managing Effects on Economic Growth and Societal Well-being

Complementing the restrictions on individuals' free movement and an advanced contact tracing regime, Singapore's Covid-19 strategy also comprised a financial plank, aimed at mitigating the economic consequences for businesses and individuals.<sup>28</sup> The government emphasized assistance to small and medium-sized enterprises, which play a significant role in the city-state's economy, gig economy workers, and low-income households. Parliament swiftly approved four consecutive hefty financial aid packages amounting to 20 per cent of Singapore's GDP, drawing in part on the country's ample reserves.<sup>29</sup> The business-focused interventions were geared toward defraying operational and other costs to minimize retrenchment and insolvencies. Most notably, the government agreed to co-fund the first SGD 4,600<sup>30</sup> in gross monthly wages paid to each local employee for a nine-month period.<sup>31</sup> As for individuals, the self-employed, retrenched, and job-seekers were given supplementary income relief. Residential households were also given cash grants and tax rebates. Working with the financial industry, the de facto central bank announced schemes to allow deferment of payment of mortgage, insurance premiums, education, commercial or industrial property, and car loans until the end of the year, with those whose income had been significantly reduced due to the epidemic also being able to convert their credit card debt into a low-interest loan.<sup>32</sup>

Finally, recognizing the impact of Covid-19 on the performance of contractual obligations, Singapore provided interim legislative relief for companies and individuals with specific types of commercial, property, or consumer contracts.<sup>33</sup> For a six-month period, and possibly up to a year, the

<sup>28</sup> See also Tan and Wang, Chapter 25, this volume.

<sup>29</sup> *Constitution of the Republic of Singapore*, art. 142(4) and arts. 148–148I.

<sup>30</sup> The median wage in Singapore.

<sup>31</sup> In April and May, the government covered of 75 per cent of that sum, reducing the amount to 50 and then 25 per cent, with most relief provided to the aviation, tourism, land transport, and arts and culture sectors.

<sup>32</sup> See also Hofmann, Chapter 7, this volume.

<sup>33</sup> *CMTA*, Pt. 2. The law minister can add more categories.

enforceability of these contracts is suspended once either party indicates that it is unable to honour its commitment due to the epidemic. Disputes are resolved extrajudicially and free of charge with the help of assessors appointed by the Ministry of Law.

#### 4. Evaluation and Remaining Challenges

In the early weeks of the outbreak, Singapore's population mostly settled quickly into a new normal of temperature checks and keeping apart from others. The healthcare services were never even close to being overwhelmed, largely due to the outsourcing of care for mildly ill and recovering patients to ad hoc facilities, allowing hospitals to dedicate their capacity to the serious cases. The number of community infections and Covid-19 mortalities remained low. Even in relation to the outbreak in the foreign worker dormitories, much of the criticism has focused on the living conditions rather than the failure to anticipate this eruption of cases or the eventual response.<sup>34</sup> Some might say that having been accustomed to single-party political hegemony since independence—and colonial rule for centuries beforehand<sup>35</sup>—the population simply accepts the dictates of the governing elites. In our view, however, the design and communication to the public of Singapore's Covid-19 policies have greater explanatory power. There have been no visible fractures within the government, creating a sense of unity and clarity on the policy trajectory. In a related vein, many containment policies were designed based on epidemiological advice, with medical experts prominently in attendance at daily press briefings, notably during the early phases of the outbreak. This visibility provided an assurance of objective medical quality and buttressed compliance, given the respect that Singaporeans hold for doctors and experts more generally. The distinctive Singaporean proclivity for public-behaviour campaigns (see the samples in Figures 1a–c) helped counteract the urge to speculate or engage in fearmongering. Beyond managerial strategies, the country's compactness, well-developed infrastructure, and competent civil service made mitigating measures such as contact tracing and mask distribution relatively easy. Finally, Singapore's well-endowed public coffers enabled the government to alleviate the economic fallout of the pandemic for citizens and local businesses, neutralizing what might otherwise have been a lightning rod for public discontent.

<sup>34</sup> See, e.g., Grace Ho, "Structural and mindset changes needed to improve wages and living conditions of foreign workers, say analysts," *The Straits Times*, 6 May 2020.

<sup>35</sup> See further Chua and Lee, Chapter 8, this volume.



Figures 1 a–c Covid-19 posters

Reproduced with permission of gov.sg (Figures 1a-1b) and the Ministry of Health (figure 1c), Singapore.

# SENIORS

## STAY HOME TO PROTECT YOURSELVES

Stay active, eat and rest well to boost your immunity

All must wear a mask when outside their homes

Do not see anyone beyond immediate household members

Don't go near seniors if you are sick

Avoid visiting markets get others to help

Help seniors with their essential needs e.g. buying food and groceries for them

**The responsibility of keeping our seniors safe rests upon us who are younger**

**COVID-19 can infect all, young and old. But globally and in Singapore, the majority who have died due to COVID-19 have been seniors.**



**Do not spread rumours.**  
Get the latest on COVID-19 by signing up for the Gov.sg WhatsApp channel ([www.go.gov.sg/whatsapp](http://www.go.gov.sg/whatsapp))




Updated: 6 May 2020


Figures 1a-c Continued





It's **ORANGE** now but you can  
**STAY SAFE**  
**WITH**  
**THE 5M'S**


Play your part in containing the spread of  
 COVID-19 (Coronavirus Disease 2019) by following the **5M's**.

 **MANAGE MY HEALTH**  
 36.9°C By keeping a close watch on my body for symptoms.


 **MAINTAIN CLEAN HANDS**  
 Through good personal hygiene of regular hand washing with soap and water.


 **MINIMISE CONTACT**  
 With those who are unwell.

 **MASK UP WHEN UNWELL**  
 And visit the doctor immediately.

 **MONITOR THE NEWS**  
 With [moh.gov.sg](http://moh.gov.sg) and [Gov.sg WhatsApp](#).

**DORSCON Orange** indicates that while the disease is severe and spreads easily from person to person, it has not spread widely and is being contained in Singapore. Be socially responsible. Maintain good personal hygiene. Look out for health advisories. Comply with control measures.

 **PRACTISE GOOD PERSONAL HYGIENE**  
 The Ministry of Health has introduced additional measures to safeguard public health.  
 Check [www.moh.gov.sg](http://www.moh.gov.sg) for the latest updates.

  
**MINISTRY OF HEALTH**  
 SINGAPORE

Figures 1a–c Continued

### A. Winning Hearts and Minds: Managing the Covid-19 Narrative

While Singapore's generations of political leaders have always emphasized the importance of managing narratives—and this particular crisis narrative is no different—the challenge facing the 4G leadership is that the environment has

changed. The traditional top-down model with the government as benevolent leader, emblematic of Lee Kuan Yew's post-independence leadership, has begun to give way to a more egalitarian exchange characterized by greater openness in communication.<sup>36</sup> This shift can be attributed to the coming of age of a younger electorate that is more vocal, educated, and attuned to the power of social media.

As a result, the government invested in a multi-layered communication strategy. As mentioned, the MTFC participated in regular press briefings together with the director of public health. This allowed policy choices and upcoming measures to be clearly explained. In parallel, MOH organized closed Telegram chat groups with doctors to expound on steps to be taken to obtain feedback and buy-in from this important constituency. The government also set up a WhatsApp service (gov.sg) that sent push notifications to subscribers consisting of daily updates on the number and relevant details of new cases and recovered patients (including a breakdown between citizens and non-citizens), changes to public health measures, and advisories on the latest Covid-19 social etiquette rules. In tandem, its various websites were constantly updated and an abundance of posters provided visual cues in Singapore's physical living environment. Thousands of "safe-distancing ambassadors" were appointed to patrol public spaces and educate or remind the public of the latest rules.<sup>37</sup>

However, there have been instances of missed alignment of government responses, producing unintended consequences. One of the earliest concerned the change in DORSCON level. A leaked memo in the morning led the national media arm to publish a bold "Dorscon Orange—Fake News" headline on its website in the afternoon, with the government announcing that there would indeed be an increase in risk level that very evening. A widely publicized bout of panic buying followed. Other mishaps in information management included a cabinet minister criticizing Hong Kong's Carrie Lam for wearing a mask and harshly condemning the panic buying by a small group of "idiots" in a meeting, the recordings of which were later leaked, and several turns by the Ministry of Trade and Industry on which businesses could resume operations during the circuit-breaker extension. We note, however, that most of these communication slip-ups happened relatively early on. As the political establishment sought to contain the fallout, the 4G leadership managed to regain its momentum, with a March poll affirming that Singaporeans trusted the government to guide them through the pandemic.<sup>38</sup>

<sup>36</sup> Kevin Kwang, "4G leaders will work with Singaporeans to design, implement public policies: DPM Heng," *The Straits Times*, 6 June 2019; "PM Lee doorstep interview" (n. 11).

<sup>37</sup> "Enforcement of safe distancing measures in public spaces in HDB estates to curb COVID-19 transmission," Ministry of the Environment and Water Resources, 6 April 2020.

<sup>38</sup> IPSOS, "Singaporeans are confident in the Government amidst fears of the COVID-19 outbreak," 16 March 2020, [https://www.ipsos.com/sites/default/files/ct/news/documents/2020-03/ipsos\\_press\\_release\\_singaporeans\\_confident\\_amidst\\_covid-19\\_fears\\_13mar2020.pdf](https://www.ipsos.com/sites/default/files/ct/news/documents/2020-03/ipsos_press_release_singaporeans_confident_amidst_covid-19_fears_13mar2020.pdf).

In a surprise development, given the disciplined reputation of Singapore's civil service, the government was also embarrassed by two leaks of draft press releases containing details of proposed containment measures and internal tallies of daily new infections. The leaks were swiftly plugged, with the responsible civil servants arrested and charged under colonial-era official secrets legislation.<sup>39</sup> These leakages helped render the government more proactive in the timing and details of information disclosure.

The government further had to address the Covid-19-related disinformation regarding its containment measures on social media and alternative online news outlets. Alongside exhortations for the public to rely only on trusted sources, the government invoked its contested fake news legislation.<sup>40</sup> Although geared to safeguard the integrity of Singapore's democratic processes, this statute is cast in sufficiently capacious terms to enable its use for non-political ends. By mid-2020 it had been invoked in relation to Covid-related matters on a handful of occasions. Importantly, those uses were uncontroversial politically and socially; whether this acceptability will spill over to non-Covid-19 situations is an open question.

What is clear, though, is the government's concerted effort to remain in control of the narrative and engage with citizens. This is important not only because it affects Singaporeans' propensity to respect Covid-19-related measures for their own sake but also the PAP's political fortunes further down the road.

## B. Reckoning with Rising Inequities

While Singapore has long been invested in stimulating economic prosperity, there has been a growing recognition of the need for recalibration to address social inequalities even before the pandemic.<sup>41</sup> The crisis has made confronting this challenge more urgent as well as more difficult, as it has thrown the fault lines in society between the haves and have-nots in sharper relief. Inequality gaps were apparent in the differential access to work-from-home opportunities that often track socio-economic circumstances, the challenges faced by elderly Singaporeans unfamiliar with technology, and the ability of better-resourced families to manage the circuit-breaker measures (with larger residences

<sup>39</sup> *Official Secrets Act* (Cap 213, Rev. Ed. 2012), s. 17(2), imposes a fine not exceeding SGD 2,000 and imprisonment of up to fourteen years.

<sup>40</sup> *Protection From Online Falsehoods and Manipulation Act 2019* (POFMA) (No. 18 of 2019).

<sup>41</sup> Nathan Peng, "Inequality and the Social Compact in Singapore: Macro Trends versus Lived Realities," *Journal of Southeast Asian Economies* 36, no. 3 (2019): 355; Faizal Yahya ed., *Inequality in Singapore* (Singapore: Institute of Policy Studies, 2015); Pundarik Mukhopadhaya, *Income Inequality in Singapore* (Hoboken: Taylor and Francis, 2014).

providing household members more space to work, study, or relax). While government transfers and taxation rates had reduced the Gini coefficient (signifying income disparity) to the lowest level since 2001,<sup>42</sup> the pandemic triggered Singapore's worst recession since independence, thereby impeding—and possibly reversing—progress on closing the income gap. Relatedly, the post-Covid-19 shape of the economy may exacerbate socio-economic inequalities. While the stay-at-home requirements for many in the workforce seem to have finally conquered the long-time resistance to telecommuting and flexible work arrangements, those with sufficient resources are more likely to thrive under such conditions. More generally, those already possessing strong digital literacy skills stand to surge ahead as Singapore's economy is future-proofed and its dependence on tourism is re-examined, considering the extent to which large swathes of the economy and society were rooted in an analogue world.

There are moreover obvious inequities between citizens and non-citizens, notably blue-collar foreign workers. The public discourse in this regard is convoluted, due to the inevitability of uncomfortable trade-offs.<sup>43</sup> While the rights of foreign workers have been championed, many are concerned about housing large numbers in residential neighbourhoods. Yet, the country's small land area constrains the search for locations to build new dormitories. In a related vein, the call for better living conditions raises the need for, and enforcement of, stricter statutory requirements. It is far from certain, however, whether Singaporeans would be willing to bear a higher cost for their flats and other essential services if the price of foreign labour goes up in response. The crux of the matter is whether Singapore can—and should—promote a more inward-looking economy that is more self-reliant and productively efficient but with rising domestic employment cost. Restricting reliance on migrant workers means depriving economic migrants from poorer countries in the region the opportunity to secure a better financial future. It would also require a paradigm shift for citizens to take up jobs traditionally looked down on as menial or blue-collared.

## 5. Concluding Remarks

Singapore's Covid-19 strategy was organized around two poles. The first was technocratic and expedient government. The various measures were coordinated and deliberately timed and justified by the best available evidence. In this way, the government by and large managed to resist popular pressure to *prematurely*

<sup>42</sup> "Key Household Income Trends, 2019," *Department of Statistics*, February 2020.

<sup>43</sup> Ng Jun Sen and Justin Wong, "The Big Read: Solving Singapore's foreign workers problem requires serious soul searching, from top to bottom," *The Straits Times*, 11 May 2020.

close its borders, require mask-wearing, or lock down economic activity. Its containment strategy, especially in the first two waves of infections, has been lauded. Testing, although based on selective criteria, was broad enough to be per capita one of the highest in the world.<sup>44</sup> Contact tracing, as with isolation of suspected and confirmed cases, was done with painstaking efficiency. The government was also attentive to contextual changes, swiftly adapting its crisis playbook as more of the (effects of the) virus became known. Restrictions on social and economic life were gradual, not sudden. Yet only with sufficient hindsight will one be able to assess the government's ability to manage the narrative and navigate the country out of the crisis and beyond, with a set of younger leaders at the helm.

The second strategic pole is social solidarity. The government pumped billions into the economy to help businesses and individuals weather the pandemic. Many measures targeted lower-income families at risk of being left behind in the looming recession. Expressions of concern for the predicament of the migrant workers were directly addressed by the prime minister in one of his speeches, in which he promised that “we will care of you, just like we care for Singaporeans. . . . We will look after your health, your welfare and your livelihood.”<sup>45</sup> So too can one find numerous examples of grassroots initiatives embodying this sentiment.<sup>46</sup> Whether these measures lead to a new paradigm of the place of migrant workers in Singapore society remains to be seen. As for relations among citizens, crises can be powerful catalysts in ongoing nation-building processes. For Singapore, which has elevated social integration to a core marker of its identity, constructing a new sense of cohesion between the different socio-economic classes will be instrumental to the future flourishing of this “accidental nation.”<sup>47</sup>

<sup>44</sup> “Scaling up of Covid-19 testing,” Ministry of Health, 27 April 2020.

<sup>45</sup> Lee, “COVID-19 situation on 21 April” (n. 8).

<sup>46</sup> Natasha Meah, “S’poreans give S\$345,000 to help foreign workers after Covid-19 cases spike in dormitories called ‘squalid’ by some,” *Today Online*, 9 April 2020. Other initiatives focused on topping up migrant workers’ prepaid SIM cards, sewing reusable masks, and providing meals.

<sup>47</sup> Cf. Siong Guan Lim, *Can Singapore Fail? Making the Future for Singapore* (World Scientific, 2018), ch. 2. Singapore’s independence from neighbouring Malaysia in 1965 was unplanned, and the country is often said to have survived against the odds.

# South Korea: Democracy, Innovation, and Surveillance

*Sunghee Chung\* and Sujin Lee\*\**

## 1. Introduction

South Korea (formally, the Republic of Korea) recorded the second-highest number of confirmed Covid-19 cases in the world, following China, at the end of February 2020. Nevertheless, South Korea was able to “flatten the curve” on Covid-19 in a relatively short period without imposing a state of emergency or a national lockdown.<sup>1</sup> Despite the initial spike in Covid-19 cases, South Korea has been praised globally for its transparent and innovative approaches to containment through private-public partnership using its advanced technology and healthcare system in fighting against the coronavirus. How did South Korea’s innovative strategy work in combating Covid-19 without a complete lockdown?

This chapter examines South Korea’s responses to the pandemic, focusing on its innovative approach and regulatory background in implementing the so-called “test-track-treat strategy.” Years earlier, South Korea revised and introduced a regulatory framework to allow for effective responses and interventions against infectious disease outbreaks in the aftermath of its traumatic experiences with Middle East Respiratory Syndrome (MERS) in 2015.<sup>2</sup> This chapter explores how the amendments to regulations related to infectious diseases in the aftermath of the MERS outbreak have worked to South Korea’s advantage in fighting Covid-19. Furthermore, this chapter analyzes how South Korea’s private-public

\* Lecturer, Department of Linguistics and Modern Languages, The Chinese University of Hong Kong.

\*\* Assistant Professor, Department of Pacific and Asian Studies, University of Victoria (<https://orcid.org/0000-0003-0053-5470>).

<sup>1</sup> For other Asian countries’ responses to Covid-19, see Peter Guest, “How the Corona Virus reshaping Asia’s borders, business and trade,” *Nikkei Asian Review*, 1 April 2020, <https://asia.nikkei.com/Spotlight/Cover-Story/How-the-coronavirus-is-reshaping-Asia-s-borders-business-and-trade>.

<sup>2</sup> An importation of Middle East Respiratory Syndrome (MERS) coronavirus into South Korea in 2015 led to the largest MERS outbreak outside of the Middle East. By the end of the outbreak, 186 laboratory-confirmed cases and 38 deaths had been recorded. “2015 MERS Outbreak in the Republic of Korea,” World Health Organization, accessed 25 May 2020, <https://www.who.int/westernpacific/emergencies/2015-mers-outbreak>.

partnership has paved the way for providing massive and rapid testing, effective epidemiological investigation, and medical treatment in a timely and adequate manner.

However, despite South Korea's success in the flattening curve, its use of large-scale testing and information and communication technology (ICT) to track patients raises controversial human rights and privacy issues. The extensive use of surveillance technologies to track and monitor individuals has the potential to infringe upon and limit fundamental human rights. Despite that South Korea successfully held a parliamentary election in the midst of the pandemic without eroding voting rights, one of the key democratic principles, the coronavirus crisis has posed a vexing dilemma of how to sustain democracy.<sup>3</sup> This chapter illuminates the dilemma facing South Korea between democratic governance and surveillance technology and discusses how to reconcile, through a South Korean lens, potential tensions between individual freedom and public health in a state of emergency.

## 2. Timeline of Spread of Covid-19 in South Korea

Instead of imposing a formal state of emergency or a national lockdown, South Korea has controlled the Covid-19 situation through the management of the Central Disaster and Safety Countermeasures Headquarters (CDSCHQ) with regulations for infection disease control. South Korea witnessed its first confirmed Covid-19 case, a thirty-five-year-old Chinese woman who arrived at Incheon International Airport with a fever that was detected during thermal scanning, on 19 January 2020. The government swiftly defined Covid-19 as a “social disaster” pursuant to Article 3-1 (Definitions),<sup>4</sup> and scaled up its alert level from level 1 (attention) to level 2 (caution) on 20 January and from level 2 to level 3 (alert), on 28 January, based on the Framework Act on the Management of Disasters and Safety.<sup>5</sup> After raising the national infectious disease crisis level to

<sup>3</sup> The 2020 parliamentary election attracted the highest voting turnout (66.2 per cent) in twenty-eight years while resulting in no transmissions of the coronavirus. Justin McCurry, “South Korea's ruling party wins election landslide amid coronavirus outbreak,” *The Guardian*, 16 April 2020, <https://www.theguardian.com/world/2020/apr/16/south-koreas-ruling-party-wins-election-landslide-amid-coronavirus-outbreak>; “South Korea reports no new domestic COVID-19 cases in first since peak,” *The Japan Times*, 30 April 2020, <https://www.japantimes.co.jp/news/2020/04/30/asia-pacific/south-korea-zero-coronavirus-cases/#.XroLQi-cZbU>.

<sup>4</sup> Damage caused by the spread of infectious diseases under the Infectious Disease Control and Prevention Act is defined as a social disaster under the *Framework Act on the Management of Disasters and Safety*.

<sup>5</sup> The levels of alert for Covid-19 are classified into four tiers, which are “attention,” “caution,” “alert,” and “serious,” depending on the level of risk according to Article 38-2 (Issuance, etc. of Predictions or Alerts of Disasters) of the *Framework Act on the Management of Disasters and Safety*, [http://elaw.klri.re.kr/eng\\_mobile/viewer.do?hseq=37382&type=new&key=](http://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=37382&type=new&key=).

level 4 (serious), the prime minister assembled the CDSCHQ for a government-wide response to the pandemic.<sup>6</sup> The Korea Centers for Disease Control and Prevention (KCDC) became the central headquarters for disease control, spearheading Korea's response, with the assistance from the Ministry of Health and Welfare (MOHW). The Ministry of Interior and Safety assumed the role of second deputy head, providing necessary assistance, including coordination between central and local governments. Each local government also forms its own Local Disaster and Safety Countermeasures Headquarters, which is directed by the head of the local government.

South Korea's thirty-first confirmed case, which came to be known as "patient 31," marked a watershed in Korea's Covid-19 timeline. Before 18 February, the majority of confirmed cases were imported, and the government had them under control, although health authorities and medical experts were alert to the possibility of a community spread of the virus. With the appearance of the nation's thirty-first confirmed case, the concern over possible community spread was vindicated. Patient 31 triggered a mass outbreak in the city of Daegu, Korea's fourth largest city with 2.45 million residents, and neighboring towns. Although it is disputed whether patient 31 was actually a "super-spreader"—a term vaguely defined as a person who infects significantly more people than others—her attendance, while symptomatic, at two services of the Shincheonji Church of Jesus was responsible for a massive spike in coronavirus cases in the country. The KCDC quickly obtained a full list of over 9,000 congregants of the Daegu Shincheonji Church and had each of them, symptomatic or not, tested for the coronavirus.<sup>7</sup>

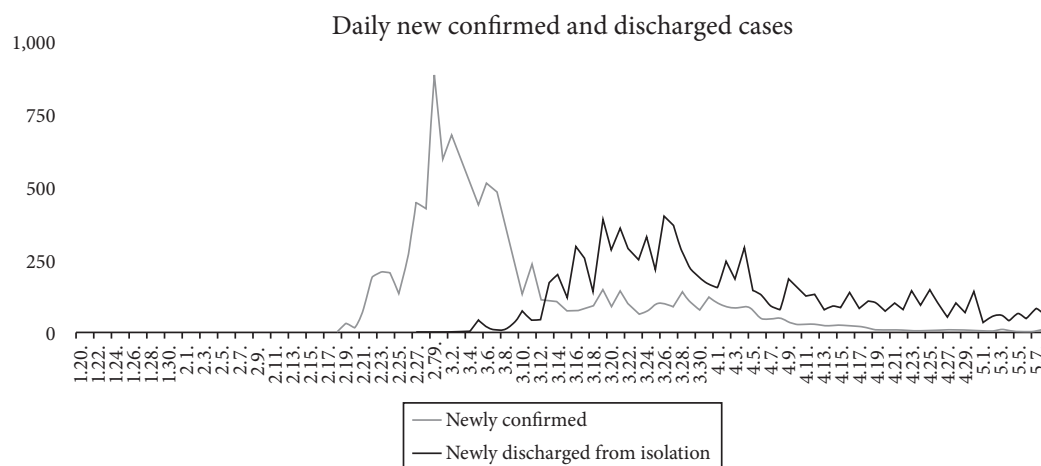
After experiencing the massive community spread linked to mass gatherings, the CDSCHQ also launched the Enhanced Social Distancing Campaign to encourage citizens to refrain from attending non-essential gatherings and events and from travelling while also maintaining personal hygiene by washing hands frequently and wearing masks in public.<sup>8</sup> The campaign was intended to last

<sup>6</sup> The Government of the Republic of Korea, *Tackling COVID-19 – Health, Quarantine and Economic Measures: Korean Experience* (Sejong: Ministry of Economy and Finance, 2020), accessed 8 May 2020, 5–8, <http://english.moef.go.kr/pc/selectTbPressCenterDtl.do?boardCd=N0001&seq=4868>.

<sup>7</sup> *Tackling COVID-19*.

<sup>8</sup> Despite the general consensus among the public about the need to avoid social gatherings, some religious groups took a firm position against the government's social distancing guidelines. Besides the Shincheonji church, whose followers continued holding services secretly while ignoring warnings from local authorities, some Protestant churches emerged as new infection clusters due to continued worship gatherings. For example, forty-nine congregants were infected at the River of Grace Community Church in Gyeonggi province, and twenty-five followers were infected at Manmin Central Church in Seoul in March alone. Given that both churches are located in the Seoul Capital Area with 24 million people, the emergence of coronavirus clusters in these churches could have devastating impacts on the nation's pandemic control. Whereas the majority of religious gatherings were moved online either voluntarily or upon the recommendation of the central government and local authorities, some Protestant churches continued to hold services in the name of religious freedom. Chan-kyong Park, "Coronavirus cluster emerges at



**Table 1** Daily new confirmed and discharged cases<sup>a</sup>

<sup>a</sup> “Press Release: 12 additional cases have been confirmed (as of 8 May),” KCDC, <https://www.cdc.go.kr/board/board.es?mid=a30402000000&bid=0030>.

for two weeks starting on 22 March, but with a wave of imported cases, the CDSCHQ extended it at two weeks intervals until 5 May while easing some restrictions on social gatherings and sporting events. The Enhanced Social Distancing Campaign seems to have had positive effects: by 20 April, one month after it was launched, daily confirmed cases were reduced to thirteen (more than half of which were imported) and held relatively steady at around twenty per day until late May.

The government’s legal and regulatory measures, many adopted after the MERS epidemic, have combined with private sector innovation to contain the Covid-19 epidemic, at least in the first half of 2020. As Table 1 shows, after a peak in confirmed cases at 909 at the end of February, new cases have gradually declined, despite some smaller outbreaks. However, as the next two sections will show, despite the advantages of innovative technologies, the government’s heavy use of surveillance technology in the name of public health remains controversial.

### 3. Governance of Pandemics: The Government’s Response

#### A. Extensive Contact Tracing

The South Korean government’s “test-track-treat” strategy involves intrusive contact tracing, mass testing, and a secure treatment plan based on systematic patient classification and universal healthcare. Among the three main pillars of

the model, ICT-based contact tracing marks a clear difference from European and North American responses to Covid-19, which have erred on the side of individual privacy while resorting to lockdowns or stay-at-home orders.<sup>9</sup>

South Korea's technology-intensive contact tracing measures comprise two key features: first, digital contact tracing uses digital tools, including GPS data from mobile phones, credit card transaction records, and CCTV footage to identify and trace people who might have come into contact with infected individuals. Second, the whereabouts of infected individuals are publicly disclosed using various digital media such as emergency text alerts, the KCDC's social media channels, and local government websites. Transparency and openness are key components of the KCDC's contact tracing measures, aimed at alerting those whose activities have overlapped with infected individuals' routes, thereby preempting possible community spread of the virus.

Legislative changes after the MERS outbreak enabled technology-facilitated contact tracing. South Korea had suffered the largest MERS outbreak outside of the Middle East mainly due to the central government's failure to share information with the public in a timely way and its lack of coordination with local governments and medical institutes. The South Korean government responded to these governance problems by amending the Infectious Disease Control and Prevention Act (IDCPA) to enhance the systems of epidemiological investigations (Article 18-1)<sup>10</sup> and information disclosure during infectious disease emergencies (Article 34-2).<sup>11</sup> The revised IDCPA enabled the KCDC to swiftly obtain the details of patients' past whereabouts from mobile carriers, the National Police Agency, and credit card companies; furthermore, the 2015 revisions established a legal basis for the disclosure of information necessary to protect citizens' health during an infectious disease outbreak.<sup>12</sup>

The coronavirus pandemic was the first test of the enhanced use of surveillance technologies under the new enforcement provisions in the IDCPA (Article 76-2),<sup>13</sup> and ICT-based contact tracing was proved to be effective, at least through May 2020. But the disclosure of personal information concerning infected individuals also gives rise to privacy concerns. With the public disclosure of the whereabouts of individual patients through social media platforms,

another South Korean church, as others press ahead with Sunday services," *South China Morning Post*, 30 March 2020, <https://www.scmp.com/week-asia/health-environment/article/3077497/coronavirus-cluster-emerges-another-south-korean>.

<sup>9</sup> See Li, Phusamruat, Clear, and Damian, Chapter 14, this volume.

<sup>10</sup> *Infectious Disease Control and Prevention Act* (IDCPA), Article 18-1 (Epidemiological Investigations), last modified 2 Dec 2016, [https://elaw.klri.re.kr/kor\\_service/lawView.do?hseq=40184&lang=ENG](https://elaw.klri.re.kr/kor_service/lawView.do?hseq=40184&lang=ENG).

<sup>11</sup> IDCPA, Article 34-2 (Disclosure of Information during Infectious Disease Emergency).

<sup>12</sup> Jun-Seo Lee, *A Study on Improvement of Infectious Disease Control and Prevention Act and System* (Seoul: Korea Legislation Research Institute, 2018), 181–185.

<sup>13</sup> IDCPA, Article 76-2 (Request to Provide Information, etc.).

concerns about privacy violations and doxing (i.e., the internet-based practice of gathering and releasing personally identifiable information) have grown. On 9 March, the National Human Rights Commission of Korea issued a statement calling for the disclosure of only limited information required for the protection of public health while respecting individual privacy.<sup>14</sup> The KCDC responded quickly to this statement by distributing to local governments updated guidelines on information disclosure. According to the new guidelines, local governments could disclose only the previous whereabouts of Covid-19 patients, including the names of buildings and places while excluding, for privacy reasons, personally identifiable information.<sup>15</sup>

## B. Quarantine Requirements

In addition to ICT-facilitated tracing, another key containment measure was the mandatory self-quarantine requirement under the amended IDCPA. To respond flexibly to the rapidly changing Covid-19 situation, the KCDC updated the fourteen-day quarantine guidelines several times within the first three months of the first confirmed Covid-19 case. In the process of enhancing the quarantine requirement, not only was the quarantine order expanded to include all inbound travellers, but the monitoring system for quarantined individuals has also been strengthened by digital technologies.<sup>16</sup>

As of 4 February, the KCDC reinforced the quarantine guideline to include those classified as “daily contacts (i.e. having proximity with a person who was infected with Covid-19).” Previously, the KCDC had required only those who had close contact (i.e., within two metres) with someone who was diagnosed with the coronavirus to self-quarantine.<sup>17</sup> The expansion of the criteria for self-quarantine sought to prevent local transmission by isolating other potentially positive cases. Furthermore, the KCDC implemented a one-to-one monitoring system, directing local health officials to monitor self-quarantined individuals on a regular basis.

<sup>14</sup> “The NHRCK director’s statement on the excessive public disclosure of private information on people infected with COVID-19,” National Human Rights Commission of Korea (NHRCK), last modified 9 March 2020, <https://www.humanrights.go.kr/site/program/board/basicboard/view?boardtypeid=24&boardid=7605121&menuid=001004002001>.

<sup>15</sup> “Updates on COVID-19 in Korea (as of 14 March),” KCDC, [https://www.cdc.go.kr/board/board.es?mid=a30402000000&bid=0030&act=view&list\\_no=366553&tag=&nPage=1](https://www.cdc.go.kr/board/board.es?mid=a30402000000&bid=0030&act=view&list_no=366553&tag=&nPage=1).

<sup>16</sup> “Flattening the Curve on COVID-19,” The Government of the Republic of Korea, 15 April 2020, <http://english.moef.go.kr/pc/selectTbPressCenterDtl.do?boardCd=N0001&sseq=4879>.

<sup>17</sup> “Enhanced the 2019-nCoV quarantine guideline in Republic of Korea,” KCDC, last modified 4 February 2020, [https://www.cdc.go.kr/board/board.es?mid=a30402000000&bid=0030&act=view&list\\_no=365953&tag=&nPage=1](https://www.cdc.go.kr/board/board.es?mid=a30402000000&bid=0030&act=view&list_no=365953&tag=&nPage=1).

ICT was increasingly integrated pre-emptively as monitoring demands expanded. The Smart Quarantine Information System, another by-product of the 2015 MERS outbreak, allowed the MOHW to create an “information system that can electronically process information about persons subject to quarantine.”<sup>18</sup> Under this law, the South Korean government developed the Self-quarantine Safety Application to facilitate intrusive monitoring using GPS location data and a daily self-diagnosis feature.<sup>19</sup> The Safety Application was first used on 7 March. Although new infections in South Korea were stabilizing by mid-March, the transformation of Covid-19 into an official pandemic, with a rapid spread in Europe and North America in particular, led to new challenges; with an increasing number of inbound cases, the KCDC required all inbound international travellers, from 1 April, to self-quarantine for two full weeks and install the Safety Application upon arrival. The mandatory self-quarantine and strict monitoring requirement was intended not only to prevent imported infections but also to deter travellers from visiting Korea unless the reason for their travel was essential.<sup>20</sup>

Despite the enhanced self-quarantine guidelines and the deployment of ICT, dozens of self-quarantine violations were reported. In response, from 5 April, the government toughened penalties for violators: under the new rules, failure to comply with the self-quarantine regulation could result in imprisonment for up to one year or a fine up to 10 million KRW for Korean nationals; foreign nationals were subject to deportation. In addition, the government adopted a new policy on 11 April requiring quarantine violators to wear tracking wristbands called “safe bands” to better monitor those who had already defied the requirement.<sup>21</sup> However, for human rights and privacy reasons, and in contrast with the electronic monitoring of sexual offenders, the “safe band” system has been enforced only with the user’s consent and limited in application to detecting quarantine violations.<sup>22</sup>

<sup>18</sup> *Quarantine Act*, Article 29-2 (“Building and Operation of Quarantine Information System”), last modified 3 February 2016, [https://elaw.klri.re.kr/kor\\_service/lawView.do?hseq=46420&lang=ENG](https://elaw.klri.re.kr/kor_service/lawView.do?hseq=46420&lang=ENG).

<sup>19</sup> “Flattening the Curve,” 35–40.

<sup>20</sup> Throughout April, the number of short-term visitors in South Korea dropped by 61 per cent. “Regular Briefing of CDSCHQ on COVID-1 (as of 25 April),” CDSCHQ, [http://ncov.mohw.go.kr/tcmBoardView.do?brdId=&brdGubun=&dataGubun=&ncvContSeq=354211&contSeq=354211&board\\_id=&gubun=ALL](http://ncov.mohw.go.kr/tcmBoardView.do?brdId=&brdGubun=&dataGubun=&ncvContSeq=354211&contSeq=354211&board_id=&gubun=ALL).

<sup>21</sup> “Korea to use electronic bracelets on violators of self-isolation rules,” *The Korea Times*, 11 April 2020, [https://www.koreatimes.co.kr/www/nation/2020/04/356\\_287714.html](https://www.koreatimes.co.kr/www/nation/2020/04/356_287714.html).

<sup>22</sup> Osu Kim (Vice Minister, MOJ), “Why is the safe band not an infringement of human rights?” opinion, *Hankook Ilbo*, 15 April 2020, <https://www.hankookilbo.com/News/Read/202004141519349031?did=DA&dtype=&dtypecode=&prnewsid=>.

#### 4. Innovation and the Role of Technology

Technology clearly constitutes a major pillar of South Korea's effective response to Covid-19. ICT-based contact tracing and quarantine monitoring systems have significantly supported the government's transparent and innovative measures against the pandemic. The use of private sector technology has also extended to produce coronavirus test kits and provide telemedicine. Most of these developments involved public-private partnerships, with private sector innovation playing a vital role in the government's "test-track-treat" strategy. Counter-intuitively, the activation of technological innovation through public-private partnerships has contributed to promoting *democratic* accountability as opposed to Weberian *bureaucratic* accountability—that is, the rule-bound, procedural, routinized ethics cultivated by the bureaucratic polity.<sup>23</sup>

##### A. Fast-Track Regulatory Approvals of a Test Kit for Covid-19

The prompt development and production of test kits by Korean biomedical firms could also be attributed to South Korea's traumatic experience with MERS in 2015. After the MERS outbreak, the Ministry of Food and Drug Safety of Korea introduced an urgent-use approval system under the Medical Devices Act for diagnostic products for high-risk, unknown infectious diseases. It therefore enabled its biotech sector to respond quickly to initial reports of an outbreak in Wuhan in January 2020. On 27 January, one week after the first case in South Korea, government officials met with representatives from several medical companies, promising fast-tracked regulatory approval of test kits. By the end of January, the KCDC had approved Seegene's first diagnostic testing kit.<sup>24</sup> South Korean biomedical firms, including Seegene, KogeneBiotech, Solgent, SD Bio-sensor, and Biosewroom, obtained emergency use approval and received investment for infectious disease research and development by the South Korean government, quickly making large-scale and rapid nationwide testing possible.<sup>25</sup>

<sup>23</sup> Karen Petersen et al., "Intelligence Expertise in the Age of Information Sharing: Public-Private 'Collection' and its Challenges to Democratic Control and Accountability," *Intelligence and National Security* 33, no. 1 (2018): 29–31.

<sup>24</sup> "How One Firm's Covid-19 Tests Help Control The Virus In South Korea," *Forbes*, 5 April 2020, <https://www.forbes.com/sites/forbesasia/2020/04/05/how-one-firms-covid-19-tests-help-control-the-virus-in-south-korea/#6d58af595bff>.

<sup>25</sup> "Demands for Korean testing kits soar amid COVID-19 pandemic," *Korea Biomedical Review*, 17 March 2020, <http://www.koreabiomed.com/news/articleView.html?idxno=7736>.

## B. Introduction of Temporal Telemedicine during the Covid-19 Outbreak

The MOHW also temporarily permitted physicians to provide telemedicine services from the end of February 2020 as part of preventive measures to avoid group contagion in vulnerable facilities including medical institutions and nursing homes. The *Medical Service Act* was amended in March 2020 to include an exceptional permission for a limited period. Patients were able to obtain medical advice and prescription via telephone, without having to visit a hospital or clinic and risking infection.<sup>26</sup> This temporary exemption enabled MEDIHERE, a South Korean digital healthcare start-up, to introduce South Korea's first telemedicine service application. Patients could log on to the mobile application, select the hospital they wanted to visit, and make an appointment. Medical doctors could check symptoms and data provided by the patients during the appointment and send the patient's prescriptions to the patient's designated pharmacy.<sup>27</sup>

## C. Public-Private Partnerships in Developing Mobile Applications to Track Covid-19

In addition to the Safety Application described earlier, various mobile applications have also been developed very quickly by South Korean start-ups to enable Covid-19 information sharing. The most widely used application is Corona 100m, which shows the locations of infected individuals. Corona 100m warns users when they approach within 100 metres of a location previously visited by an infected individual and provides information such as the date when the infection was confirmed and the nationality, gender, and age of the person.<sup>28</sup> Corona Map, the second-most-downloaded application in South Korea as of 26 February 2020, similarly plots locations of infected individuals to help those who want to avoid these areas.<sup>29</sup>

Other mobile applications enable users to share information regarding the nearest available testing station or the closest pharmacy to purchase face

<sup>26</sup> See *Framework Act on Health and Medical Services*, art. 40 (Prevention and Management of Infectious Diseases) and art. 44 (Pilot Projects for Health and Medical Services), last modified 17 March 2010, [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=49490&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=49490&lang=ENG).

<sup>27</sup> "Medihere launches nation's 1st telemedicine app," *Korea Biomedical Review*, 10 March 2020, <http://n537.ndsoftnews.com/news/articleView.html?idxno=7666>.

<sup>28</sup> Yasheng Huang, Meicen Sun, and Yuze Sui, "How Digital Contact Tracing Slowed Covid-19 in East Asia," *Harvard Business Review*, 15 April 2020, <https://hbr.org/2020/04/how-digital-contact-tracing-slowed-covid-19-in-east-asia>.

<sup>29</sup> "As patients multiply, so does the variety of apps," *Korea Joongang Daily*, 29 February 2020, <https://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3074299>.

masks. During a shortage of masks in February and March, start-ups developed applications such as Mask Map, Mask Saja, and 00 Mask that provided information on local availability. In each application, a GPS-enabled digital map displayed all the state-designated mask sellers, including pharmacies and post offices, close to the user.

South Korea's aggressive response to Covid-19 has been enabled by leveraging on private sector expertise, especially the ICT and healthcare sectors, as well as the government's openness to public-private collaboration for innovative solutions. Without the government's fast-track approval of testing kits, technologies available in the private sector would not have been utilized for mass testing. As discussed in the next section, however, there is a flip side to the effective collaboration of private sector technologies and government policy; with the development of mobile applications for coronavirus-monitoring purposes, digital surveillance has gradually become part of Korean people's lives. The question of how much surveillance democracy should be tolerated has arisen in the age of the coronavirus pandemic.

## 5. Controversies around South Korea's Response

On 30 April 2020, which marked the 101st day since the first confirmed case of the new coronavirus in South Korea, the KCDC reported that four imported cases were confirmed on that day with no domestic infections. A drastic decrease in daily confirmed cases from 909 cases two months earlier indicated that the South Korean model, involving innovative technologies and strict enforcement of quarantine coupled with surveillance, proved effective in slowing down the spread of coronavirus without a nationwide lockdown. Nonetheless, South Korea's Covid-19 response evoked controversy within the country and abroad surrounding the disadvantages of technologically facilitated governance and case disclosure: the infringement of individual freedom and privacy rights in the interest of public health and safety.

We have seen in this chapter that some enforcement mechanisms were implemented only at the expense of limiting civil rights. Although the South Korean government never implemented a complete lockdown, quarantine restrictions and other limits on movement were imposed on potentially exposed individuals. In addition, ICT-based surveillance systems were heavily used for tracing and monitoring purposes. Korea's reliance on surveillance technologies in preventing and containing the coronavirus garnered criticism from foreign news outlets for forcing a trade-off between privacy and public health.<sup>30</sup> So, too,

<sup>30</sup> As opposed to general negative responses to information disclosure from abroad, public opinion in South Korea has been largely favorable to the measure in the interests of public security. According

largely within South Korea, did the trade-off between religion and public health, with some religious groups defending their religious gatherings in terms of their constitutional right to religious freedom.<sup>31</sup>

### A. Democratic Governance in a New Normal

These tensions between individual rights and public health point to a fundamental question of governance in the age of the pandemic: Is the heavy use of surveillance technologies a symptom of the authoritarian tendency that existed in South Korea before the democratic transition of 1987?<sup>32</sup> Furthermore, how can we define the border between biopolitical governance that deploys surveillance technologies to ensure the safety of the population and authoritarian governance that deprives the people of their civil liberties using surveillance systems? The difficulty with determining the difference between biopolitical and authoritarian governance lies not necessarily in the fact that individual rights are subject to restrictions in a public health crisis. Rather, the difficulty lies in the deep-seated dichotomous view of liberal democracy that divides private and public spheres. If individuals' privacy rights and the government's use of digital surveillance are merely two players in a zero-sum game, the South Korean government's Covid-19 response indicates the revival of authoritarianism, whereas countries that do not rely on surveillance tech but rather resort to lockdowns or herd immunity remain "truly" democratic.

However, more careful examination of the nature of governance in the time of a global pandemic reveals that a lockdown is still a form of government-imposed restriction on freedom of movement, while herd immunity, or a laissez-faire

to a survey conducted by Asian Citizen's Center for Environment and Health, nine out of ten Korean respondents considered the public disclosure of infected people's whereabouts a necessary measure for the sake of public health whereas fewer than 10 per cent of the people expressed concern over an invasion of privacy. "94.1% of Korean citizens favor 'social distancing' . . . its side effects experienced by 32.4% of the citizens," Asian Citizen's Center for Environment and Health, last modified 8 April 2020, [http://eco-health.org/bbs/board.php?bo\\_table=sub02\\_03&wr\\_id=980](http://eco-health.org/bbs/board.php?bo_table=sub02_03&wr_id=980).

<sup>31</sup> "Protestant churches under fire for holding Sunday services despite the coronavirus epidemic," *The Korea Herald*, 17 March 2020, <http://www.koreaherald.com/view.php?ud=20200317000794>. See also Schonthal and Jayatilake, Chapter 18, this volume.

<sup>32</sup> South Korea had long been governed by authoritarian regimes since the 1960s despite the promulgation of a democratic constitution in 1948. After the 1961 coup, two military leaders, Park Chung-hee and Chun Doo-hwan, took over the reins of government one after another and suspended the existing democratic order, including the principle of universal suffrage by declaring a state of emergency. It was not until 1987 that South Korea transitioned to a democratic nation as a result of a nationwide civil liberties movement calling for the protection of the Constitution and a fair election. Hannes B. Mosler et al., "Introduction: The Quality of Democracy in Korea," in *The Quality of Democracy in Korea: Three Decades After Democratization* (Cham: Springer International Publishing, 2018), 1–23.



strategy to the unprecedented pandemic, is nothing but the government's abandonment of its duty to protect the state's most vulnerable populations. In either case, this negligence imperils not only the elderly and other physically vulnerable groups but also those who have lesser access to social protection systems, including health insurance coverage; these populations are thus deemed disposable. Are the democratic ideals of individual freedom and privacy truly being protected by these countries? More fundamentally, can civil liberties be protected only in inverse proportion to community health and well-being?

The Covid-19 pandemic requires revisiting the general nature of the relationship between democratic governance and surveillance technologies around the world. As Linnet Taylor, data science researcher, notes, "we should fight to keep the impacts and benefits equal for everyone, we should resist [surveillance technology's] normalization and we should demand its reversibility"; we cannot simply give up the benefits of digital surveillance measures for the protection of privacy rights when the use of tech can save many lives.<sup>33</sup> It is the normalization of surveillance for the government's own interest that people should resist, not the technology used to protect one's well-being that is inextricably dependent on the health of others.

The challenges around democracy exposed by the South Korean response to Covid-19 are in fact not domestic concerns but global ones. The tension between private right and public good leaves a vital question regarding the validity of such dichotomy in the age of the pandemic. A post-pandemic world where Covid-19 potentially gives rise to a new normal for governments may lead to the remaking of democratic governance. Ideal, sustainable governance requires an acknowledgment of what Judith Butler calls "vulnerability" both as a fundamental human condition and as the foundation for "a new politics."<sup>34</sup> The coronavirus pandemic did not create *certain* vulnerable populations, but only magnified pre-existing vulnerability both as a universal condition and as a product of differential biopolitics. Understanding one's own vulnerability, therefore, allows us to realize the interconnectedness and interdependence of individuals, communities, and countries. The role of ideal governance in a new normal should be to mobilize and facilitate the sense of interdependence among private and public agencies and build community consensus on effective responses to future health crises. Democratic governance in a new normal must be built not on *individualized* freedom and rights but on *interconnected* freedom and solidarity.

<sup>33</sup> Taylor, Linnet (@linnetelwin), "On #privacy and #coronavirus," Twitter, 14 March 2020, <https://twitter.com/linnetelwin/status/1238777250096599040>.

<sup>34</sup> For vulnerability, see Judith Butler, "Nonviolence, Grievability, and the Critique of Individualism," in *The Force of Nonviolence: The Ethical in the Political* (London; New York: Verso, 2020), 27–65.

# Hong Kong: The Healthcare Professions and the Outbreak

*Calvin W.L. Ho,\* Daisy Cheung\*\**

## 1. Introduction

“This shouldn’t be about politics, it should only be about public health.”<sup>1</sup> These were the words of one of approximately 3,000 healthcare professionals who went on strike in the first week of February 2020 to demand that the Hong Kong government take urgent action to respond to the emerging Covid-19 pandemic. Four months later, Hong Kong had managed to contain the first two waves of the virus. Its experience with the Severe Acute Respiratory Syndrome (SARS) epidemic in 2003 helped to prepare the health system for a pandemic, allowing it to avoid a complete lockdown of the city. Social-distancing measures, aggressive testing, and contact tracing have also been critical in controlling the local transmission of the disease. But when historians and health policy researchers look back at the early days of the outbreak, they are likely to cite the impact of the five-day strike as a critical turning point in Hong Kong’s initially hesitant response. This strike, and the role of the healthcare profession in shaping public health policy, is the focus of this chapter. We begin with an account of the Covid-19 outbreak in Hong Kong, situating the strike within that narrative. We then argue that the striking healthcare professionals used their standing in Hong Kong to revive the city’s collective memory of the SARS outbreak, mobilizing public action, and possibly triggering a stronger public health intervention by the government.

\* Associate Professor, Faculty of Law, University of Hong Kong; Co-Director, Centre for Medical Ethics and Law, University of Hong Kong (<https://orcid.org/0000-0002-8328-1308>).

\*\* Assistant Professor, Faculty of Law, University of Hong Kong; Deputy Director and Teaching Faculty, Centre for Medical Ethics and Law, University of Hong Kong (<https://orcid.org/0000-0003-1942-8966>). The authors would like to express their gratitude to Professor Po-Jen Yap for his thoughtful comments and guidance. All errors are the authors’.

<sup>1</sup> Laignee Barron, “‘This Shouldn’t Be About Politics.’ Hong Kong Medical Workers Call for Border Shutdown Amid Coronavirus Outbreak,” *Time*, 4 February 2020, <https://www.msn.com/en-us/news/world/this-shouldn-t-be-about-politics-hong-kong-medical-workers-call-for-border-shutdown-amid-coronavirus-outbreak/ar-BBZD9Zm>.

First, some background. Hong Kong's public healthcare system is financed through tax revenue (about 5.7 per cent of GDP in 2016), allowing the government to provide access to healthcare services at affordable prices. Its healthcare services are mainly delivered through the Department of Health (DH) and the Hospital Authority (HA). Among its many responsibilities, the DH is responsible for public health matters including health promotion and infection control. The HA manages healthcare service delivery through its forty-three hospitals, forty-nine specialist outpatient clinics, seventy-three general outpatient clinics, eighteen Chinese Medicine outpatient clinics, and community outreach teams. The public system is complemented by a private sector which is regulated by the DH under the Medical Clinics Ordinance (Cap 343), and is the main provider of ambulatory care. In contrast, all critical care emergency services and almost 90 per cent (in terms of total bed-days) of inpatient secondary and tertiary care are provided by the public sector.<sup>2</sup> Public sector doctors and nurses are employees of either the HA or the DH; the HA oversees individual public hospitals and healthcare institutions, the DH, and some clinics and health centres. Both come under the Food and Health Bureau, which is responsible for Hong Kong's health services. In early February 2020, some 3,000 members of a newly formed healthcare trade union voted to go on strike, linking them inextricably to the story of Covid-19 in Hong Kong.

## **2. The Emergence of Covid-19: The First Wave and the Healthcare Strike**

The people of Hong Kong were first introduced to Covid-19 in late December 2019. Reports of cases in Wuhan, the epicentre of the outbreak, led to speculation and apprehension that the SARS virus which had ravaged Hong Kong seventeen years earlier had resurfaced. By 4 January 2020, eight suspected cases had been reported, prompting the Hong Kong government to set its response level at "serious," the second of three levels of response.<sup>3</sup> At the time, Wuhan health authorities had stated that their initial investigation had not yielded evidence that there was human-to-human transmission of the virus, but local experts remained skeptical. It was reported, for example, that Dr. Ho Pak-leung, a

<sup>2</sup> Food and Health Bureau of Hong Kong, Strategic Review on Healthcare Manpower Planning and Professional Development: A Report, June 2017, 3, [https://www.fhb.gov.hk/download/press\\_and\\_publications/otherinfo/180500\\_sr/e\\_sr\\_final\\_report.pdf](https://www.fhb.gov.hk/download/press_and_publications/otherinfo/180500_sr/e_sr_final_report.pdf).

<sup>3</sup> Elizabeth Cheung, "Hong Kong activates 'serious response level' for infectious diseases as Wuhan pneumonia outbreak escalates," *South China Morning Post*, 4 January 2020, <https://www.scmp.com/news/hong-kong/health-environment/article/3044654/hong-kong-activates-serious-response-level>.

Clinical Associate Professor in Microbiology from the University of Hong Kong, suspected human-to-human transmission given the significant jump in cases over a few days and called for “the most stringent” preventive measures to be taken.<sup>4</sup>

Despite calls for more robust measures at all ports of entry, the monitoring of travellers entering into Hong Kong through the high-speed train terminus in West Kowloon remained minimal.<sup>5</sup> It was reported that a special lane designated for travellers from Wuhan was unused even after the arrival of a train that had stopped in Wuhan—staff members did not appear to make any attempts at identifying travellers who had embarked in Wuhan.<sup>6</sup> On 20 January, it was announced that while travellers arriving from Wuhan by air would have to complete health declaration forms, those entering through the high-speed train terminus would not.<sup>7</sup> Somewhat ironically, a tourist from the mainland who had previously visited Wuhan arrived that evening in Hong Kong through the high-speed terminus and was confirmed as Hong Kong’s first case two days later, on 23 January.<sup>8</sup>

The government responded by immediately extending the health declaration requirement to all arrivals at the high-speed terminus,<sup>9</sup> but the public sentiment was already that the government’s response was insufficient.<sup>10</sup> These sentiments were intensified by an unprecedented city-wide lockdown on the approximately 11 million residents of Wuhan in the morning of 23 January, which implied that the spread of the virus was getting out of hand and that the people who had left Wuhan on short notice the previous evening, right after the announcement was made, would need somewhere to go.<sup>11</sup> Hong Kong was a likely destination.

These developments prompted action by the healthcare profession. Doctors and nurses had begun to draw straws to decide who would join the “dirty teams”

<sup>4</sup> Cheung, “Serious response level.”

<sup>5</sup> Karen Zhang, “China pneumonia: Hong Kong authorities take low-key approach to passengers arriving in Hong Kong on Wuhan trains,” *South China Morning Post*, 5 January 2020, <https://www.scmp.com/news/hong-kong/health-environment/article/3044706/china-pneumonia-hong-kong-authorities-take-low>.

<sup>6</sup> Zhang, “China pneumonia.”

<sup>7</sup> “HK to issue health declarations – for Wuhan flights,” *RTHK English News*, 20 January 2020, <https://news.rthk.hk/rthk/en/component/k2/1503814-20200120.htm>.

<sup>8</sup> Kris Cheng, “First case of SARS-like virus in Hong Kong,” *Hong Kong Free Press*, 22 January 2020, <https://hongkongfp.com/2020/01/22/breaking-first-case-sars-like-virus-hong-kong-source/>.

<sup>9</sup> “Health declaration applies to XRL,” Government of the HKSAR, 23 January 2020, [https://www.news.gov.hk/eng/2020/01/20200123/20200123\\_203125\\_697.html](https://www.news.gov.hk/eng/2020/01/20200123/20200123_203125_697.html).

<sup>10</sup> See, for example, [Yu Kam-yin], “[No transparency in measures against virus, a slow response will not reassure the public],” *Hong Kong Economic Journal*, 23 January 2020, <https://www1.hkej.com/dailynews/commentary/article/2360858> [title and author name translated to English, here and throughout this chapter where indicated by brackets].

<sup>11</sup> Josephine Ma and Pinghui Zhuang, “5 million left Wuhan before lockdown, 1,000 new coronavirus cases expected in city,” *South China Morning Post*, 26 January 2020, <https://www.scmp.com/news/china/society/article/3047720/chinese-premier-li-keqiang-head-coronavirus-crisis-team-outbreak>.

that took care of infected patients once an anticipated outbreak erupted in Hong Kong.<sup>12</sup> Healthcare professionals also started voicing their discontent. On 23 January, the Hospital Authority Employees Alliance (HAEA), a newly formed trade union, released an announcement criticizing the government for the lack of effective preventive measures against the virus,<sup>13</sup> focussing on the absence of border controls. The announcement concluded with a “serious appeal” to the government to implement preventive measures and border controls by 1 February; otherwise, an “escalation of actions, including the initiation of industrial actions” would be contemplated.<sup>14</sup> Other trade unions stated that they would also take industrial action if border controls were not implemented by 28 January.<sup>15</sup> By 25 January, the government had cancelled all flights and trains from Wuhan, but there were still no restrictions on transportation from other cities in the mainland; travellers needed only to complete the health declaration form on arrival. Schools and universities, which had been on break for Lunar New Year, remained closed but were expected to reopen from 17 February.<sup>16</sup>

Chief Executive Carrie Lam had resisted calls to close the border as being inappropriate and impracticable, but the government relented on 28 January, announcing “partial border closure” measures.<sup>17</sup> These measures included suspension of the high-speed rail service and Intercity Through Train and closure of six border crossings and the West Kowloon terminus. She maintained that it was unnecessary to close the border entirely or forbid the entry of travellers who had transited through the mainland.<sup>18</sup>

In the meantime, the public had descended into a frenzy of panic buying of face masks, sterilization supplies, and daily necessities.<sup>19</sup> Face masks were particularly hard to procure. Most pharmacies had completely run out of stock; a few with remaining stock sold them at extremely high prices, with long queues of customers. Because news about face masks was generally disseminated online,

<sup>12</sup> [Kei Hiu-fung], “[Doctors and nurses draw straws to prepare to fight virus],” *Hong Kong Economic Journal*, 23 January 2020, <https://www1.hkej.com/dailynews/views/article/2360851>.

<sup>13</sup> “The incompetence of our government would not save us; Hong Kongers should save ourselves,” HAEA, 23 January 2020, <https://www.facebook.com/HA.EmployAlliance/posts/134488388022302/>.

<sup>14</sup> “Incompetence of our government.”

<sup>15</sup> [Kei Hiu-fung], “[Industrial action for doctors and nurses if borders not closed by fourth day of Lunar New Year],” *Hong Kong Economic Journal*, 24 January 2020, <https://www1.hkej.com/dailynews/views/article/2361979>.

<sup>16</sup> AFP, “Hong Kong declares Wuhan virus outbreak ‘emergency’ – the highest warning tier,” *Hong Kong Free Press*, 25 January 2020, <https://hongkongfp.com/2020/01/25/breaking-hong-kong-declares-wuhan-virus-outbreak-emergency-highest-warning-tier/>.

<sup>17</sup> “[Partial border closure: suspension of Individual Visit Scheme via high speed rail],” *Hong Kong Economic Journal*, 29 January 2020, <https://www1.hkej.com/dailynews/headline/article/2363106/>,

<sup>18</sup> See Neo and Lee, Chapter 6, this volume, for an in-depth, comparative discussion on the movement and border control measures adopted by Hong Kong and various other countries in Asia.

<sup>19</sup> [Kei Hiu-fung], “[Mask shortage: panic buying worse than SARS],” *Hong Kong Economic Journal*, 30 January 2020, <https://www1.hkej.com/dailynews/views/article/2363986/>.

elderly individuals who did not have access to this information did not know where to go.<sup>20</sup> Many criticized the government for failing to procure face masks for the population, particularly for the elderly.

On 1 February, the HAEA held an Extraordinary General Meeting, after which they announced that 3,123 out of 3,164 votes had been in favour of a strike. The five-day strike plan had two stages. The first involved a one-day suspension of non-emergency services. If no concrete solutions to their demands were offered by the government, the strike would proceed to the second stage, in which all members of the HAEA, regardless of rank and specialty, would participate, with only limited emergency services provided. The strike began on 3 February with some 2,700 healthcare workers, rising to 7,000 on the second day, as estimated by the HAEA. It ended in five days after a majority of members voted to return to work. No concessions were made directly in response to the five demands (to be discussed later), although during the period of the strike, the government closed all but two land crossings with the mainland and announced a mandatory fourteen-day quarantine for all mainland arrivals.<sup>21</sup> In implementing these additional measures, Chief Executive Carrie Lam denied that she was responding to the strike, which she described as an “irrational act,”<sup>22</sup> stating that “those using extreme means to try to force the government’s hand will not succeed.”<sup>23</sup> It was during this period when the first fatality, a thirty-nine-year-old male, was recorded, but for causes not attributable to the strike.<sup>24</sup>

On 7 February, the government announced its quarantine plans for mainland arrivals. Hong Kong residents would be allowed to self-quarantine at home; other travellers would have to arrange their own accommodation, failing which they would be taken to government facilities. Those who breached these rules faced up to six months in jail and an HKD 25,000 fine. The system was described as one of “self-discipline,” and a modest surveillance system was initially applied to individuals entering from the mainland.<sup>25</sup> After two individuals were placed on

<sup>20</sup> Xinqi Su, “Mission impossible for disabled Hong Kongers hunting face masks,” *Hong Kong Free Press*, 19 February 2020, <https://hongkongfp.com/2020/02/19/mission-impossible-disabled-hong-kongers-hunting-face-masks/>.

<sup>21</sup> Tom Grundy, “Coronavirus: All arrivals from mainland China must enter two-week quarantine, Hong Kong gov’t announces,” *Hong Kong Free Press*, 5 February 2020, <https://hongkongfp.com/2020/02/05/breaking-coronavirus-visitors-mainland-china-must-enter-two-week-quarantine-hong-kong-govt-announces/>.

<sup>22</sup> Jerome Taylor, “Coronavirus: Hong Kong shuts most China crossings over virus as medics strike,” *Hong Kong Free Press*, 19 February 2020, <https://hongkongfp.com/2020/02/03/coronavirus-hong-kong-medics-strike-govt-refuses-close-china-border/>.

<sup>23</sup> Kris Cheng, “Coronavirus: Resign, strike or endure? The dilemma of Hong Kong’s ‘dirty team’ doctors,” *Hong Kong Free Press*, 7 February 2020, <https://hongkongfp.com/2020/02/07/coronavirus-resign-strike-endure-dilemma-hong-kongs-dirty-team-doctors/>.

<sup>24</sup> Kris Cheng, “39-year-old man first coronavirus patient to die in Hong Kong,” *Hong Kong Free Press*, 4 February 2020, [https://hongkongfp.com/2020/02/04/\\_\\_\\_trashed-21/](https://hongkongfp.com/2020/02/04/___trashed-21/).

<sup>25</sup> “[Home quarantine: family members may become infection control loophole],” *Hong Kong Economic Journal*, 8 February 2020, <https://www1.hkej.com/dailynews/headline/article/2373480/>.

a wanted list for breaching self-quarantine orders, enhanced surveillance measures were introduced, including electronic wristbands for some individuals.<sup>26</sup>

The number of confirmed cases continued to rise, including a number of community infections. By early March, the number of new confirmed cases started to plateau, with civil servants who had been working from home since late January preparing to return to the office.<sup>27</sup> With surging cases in Italy, France, and Spain, however, Hong Kong braced for a second wave. On 10 March, it extended its mandatory quarantine initially to Italy and parts of France, Spain, Germany, and Japan,<sup>28</sup> and a week later, to all overseas countries.<sup>29</sup>

The second wave emerged in Hong Kong around mid-March, a week after the WHO declared Covid-19 a pandemic. A record high of twenty-five new cases was recorded on 18 March and was surpassed two days later with forty-eight.<sup>30</sup> The government described the spike as “critical,” sending civil servants back to working remotely.<sup>31</sup> It also increased the scale of virus testing at its entry points. Temporary Covid-19 test centres were set up in AsiaWorld-Expo and North Lantau Hospital to reduce congestion in hospitals.<sup>32</sup> Thousands of new monitoring wristbands were distributed to those arriving in Hong Kong, to be used with the StayHomeSafe application software.<sup>33</sup> The government also announced tougher consequences for those who breached quarantine.<sup>34</sup> Three men were

<sup>26</sup> Kris Cheng, “Coronavirus: Hong Kong police contact two people for violating ‘self-quarantine’ orders,” *Hong Kong Free Press*, 13 February 2020, <https://hongkongfp.com/2020/02/13/coronavirus-hong-kong-police-contact-two-people-violating-self-quarantine-orders/>.

<sup>27</sup> Kelly Ho, “Coronavirus: Cases in Hong Kong hit 98 as civil servants return to work and clinics firebombed,” *Hong Kong Free Press*, 2 March 2020, <https://hongkongfp.com/2020/03/02/coronavirus-cases-hong-kong-hit-98-civil-servants-return-work-clinics-firebombed/>.

<sup>28</sup> “Quarantine measures to be extended,” Government of the HKSAR, 10 March 2020, [https://www.news.gov.hk/eng/2020/03/20200310/20200310\\_211953\\_504.html?type=category&name=covid19&tl=t](https://www.news.gov.hk/eng/2020/03/20200310/20200310_211953_504.html?type=category&name=covid19&tl=t).

<sup>29</sup> “Quarantine measures enhanced,” Government of the HKSAR, 17 March 2020, [https://www.news.gov.hk/eng/2020/03/20200317/20200317\\_202509\\_713.html?type=category&name=covid19&tl=t](https://www.news.gov.hk/eng/2020/03/20200317/20200317_202509_713.html?type=category&name=covid19&tl=t). This was further extended to cover Macau and Taiwan on 24 March 2020.

<sup>30</sup> Sum Lok-kei, Kimmy Chung, and Lilian Cheng, “Coronavirus: Hong Kong records 48 new cases in biggest daily jump yet as experts warn about imported infections,” *South China Morning Post*, 20 March 2020, <https://www.scmp.com/news/hong-kong/health-environment/article/3076113/coronavirus-highest-risk-yet-new-covid-19>.

<sup>31</sup> Tom Grundy, “Coronavirus: Civil servants to work remotely again, school exams postponed as Hong Kong sees spike in cases,” *Hong Kong Free Press*, 21 March 2020, <https://hongkongfp.com/2020/03/21/breaking-civil-servants-work-remotely-school-exams-postponed-hong-kong-sees-spike-coronavirus-cases/>.

<sup>32</sup> “Virus test centres in operation,” Government of the HKSAR, 20 March 2020, [https://www.news.gov.hk/eng/2020/03/20200320/20200320\\_165632\\_459.html?type=category&name=covid19&tl=t](https://www.news.gov.hk/eng/2020/03/20200320/20200320_165632_459.html?type=category&name=covid19&tl=t).

<sup>33</sup> “Quarantine app messages sent,” Government of the HKSAR, 20 March 2020, [https://www.news.gov.hk/eng/2020/03/20200320/20200320\\_170850\\_201.html?type=category&name=covid19&tl=t](https://www.news.gov.hk/eng/2020/03/20200320/20200320_170850_201.html?type=category&name=covid19&tl=t).

<sup>34</sup> “No leniency for breaching quarantine,” Government of the HKSAR, 21 March 2020, [https://www.news.gov.hk/eng/2020/03/20200321/20200321\\_195233\\_126.html?type=category&name=covid19&tl=t](https://www.news.gov.hk/eng/2020/03/20200321/20200321_195233_126.html?type=category&name=covid19&tl=t).

later imprisoned for violating quarantine rules;<sup>35</sup> others were sent to government quarantine centres.<sup>36</sup>

On 23 March, the government banned all foreign visitors entering Hong Kong through the airport and proposed a prohibition on the selling of alcohol in restaurants and bars, targeting transmission in intimate settings,<sup>37</sup> although the prohibition was ultimately put aside after widespread criticism. Instead, a range of social-distancing measures was imposed, including the banning of public gatherings of more than four people (with exemptions), regulations on restaurant capacity and table arrangements, and the closure of various entertainment venues.<sup>38</sup> Beauty parlours, massage venues, and bars and premises selling liquor were also subsequently ordered to close.<sup>39</sup> With the new measures in place, cases began to decline in early April, with the first day of no new cases in six weeks on 20 April.<sup>40</sup> There were subsequently no community infections until two persons tested positive on 12 May.<sup>41</sup> Face mask usage among the public continued to remain high in May 2020.

### 3. Role of the Healthcare Workers' Strike

The previous section shows how, as Covid-19 emerged in Hong Kong, the government responded with a range of legal measures to control its spread. As the health adviser to the Hong Kong government, the Department of Health and its Centre for Health Protection were responsible for public health policies and

<sup>35</sup> “3 jailed for violating quarantine,” Government of the HKSAR, 30 March 2020, [https://www.news.gov.hk/eng/2020/03/20200330/20200330\\_174317\\_389.html?type=category&name=covid19&tl=t](https://www.news.gov.hk/eng/2020/03/20200330/20200330_174317_389.html?type=category&name=covid19&tl=t).

<sup>36</sup> Jennifer Creery, “Coronavirus: 36 people breach 14-day home quarantine orders – Hong Kong gov’t,” *Hong Kong Free Press*, 23 March 2020, <https://hongkongfp.com/2020/03/23/coronavirus-36-people-breach-14-day-home-quarantine-orders-hong-kong-govt/>.

<sup>37</sup> Jennifer Creery, “Coronavirus: Hong Kong to ban all foreign visitors as 8,600 businesses barred from selling alcohol,” *Hong Kong Free Press*, 23 March 2020, <https://hongkongfp.com/2020/03/23/breaking-coronavirus-hong-kong-ban-foreign-visitors-entry/>.

<sup>38</sup> “New regulations to fight COVID-19,” Government of the HKSAR, 27 March 2020, [https://www.news.gov.hk/eng/2020/03/20200327/20200327\\_202339\\_445.html?type=category&name=covid19&tl=t](https://www.news.gov.hk/eng/2020/03/20200327/20200327_202339_445.html?type=category&name=covid19&tl=t).

<sup>39</sup> Rachel Wong, “Coronavirus: Hong Kong extends limits on gatherings as beauty and massage parlours ordered to close,” *Hong Kong Free Press*, 8 April 2020, <https://hongkongfp.com/2020/04/08/coronavirus-hong-kong-extends-limits-on-gatherings-as-beauty-and-massage-parlours-ordered-to-close/>.

<sup>40</sup> Tom Grundy, “No new coronavirus cases in Hong Kong for the first time in 6 weeks,” *Hong Kong Free Press*, 20 April 2020, <https://hongkongfp.com/2020/04/20/no-new-coronavirus-cases-in-hong-kong-for-the-first-time-in-6-weeks/>.

<sup>41</sup> Lilian Cheng, “Coronavirus: new local cases in Hong Kong no cause for alarm say health experts, but days ahead will be crucial in determining if return of tough measures needed,” *South China Morning Post*, 14 May 2020, <https://www.scmp.com/news/hong-kong/health-environment/article/3084283/coronavirus-hong-kong-health-experts-doubt-new>.



regulation, implemented through promotional, preventive, curative, and rehabilitative services. Since the outbreak, a dedicated website<sup>42</sup> has provided up-to-date information on Covid-19 in Hong Kong, including regulatory requirements, statistics on confirmed cases and their distribution, isolation and quarantined arrangements, school arrangements, location of quarantine centres, inbound travel details on confirmed cases, and links to relevant resources. New regulations,<sup>43</sup> designated public quarantine facilities, and procedures were established for strict enforcement of home quarantine. Residents with a higher risk of infection would be quarantined outside the home, and such a measure has undergone judicial review on at least two occasions.<sup>44</sup> Those with lower risk would be placed in home quarantine for fourteen days. We have already seen the strict controls that were progressively implemented at Hong Kong's borders, including the fourteen-day quarantine requirement.

Aside from these formal governmental responses, however, Hong Kong's experience with the SARS epidemic might also have motivated people to act quickly, on their own initiative. One survey revealed that 70 per cent of the nearly 850 respondents said they would credit the community response for managing the outbreak, while more than half objected to commending the government.<sup>45</sup> While discontent was reflected across the five major areas of the government's responses on protective gear procurement, immigration, isolation measures, public consultation on quarantine facility placement, and education policy, the respondents were most dissatisfied with the government's work in procuring and allocating masks and protective equipment; 68 per cent of the respondents were reported to be dissatisfied, including 53.2 per cent who felt strongly so. Only 13.9 per cent were happy with how the government procured and distributed masks

<sup>42</sup> "Coronavirus Disease (COVID-19) in HK," The Government of the Hong Kong Special Administrative Region, <https://www.coronavirus.gov.hk/eng/index.html>.

<sup>43</sup> A series of regulations have been promulgated under Section 8 of the Prevention and Control of Disease Ordinance (PCDO, Cap 599).

<sup>44</sup> In *Syed Agha Raza Shah v. The Director of Health* [2020] HKCFI 770, the High Court of Hong Kong dismissed an application for a writ of habeas corpus filed by a city resident who was challenging the decision to quarantine him at a government-run facility, his having returned from visiting his family in Pakistan. The court did not consider the differential treatment of residents returning from the United States or the United Kingdom (who would be subject to home quarantine), as opposed to those returning from Pakistan, to be "manifestly without reasonable foundation." See also another reported case: Jasmine Siu, "Coronavirus: Hong Kong High Court refuses to let family of South Africa returnees quarantine at home," *South China Morning Post*, 20 May 2020, <https://www.scmp.com/news/hong-kong/law-and-crime/article/3085322/coronavirus-hong-kong-high-court-refuses-let-family>.

<sup>45</sup> Tony Cheung and Natalie Wong, "Coronavirus: Hong Kong residents unhappy with Covid-19 response – and surgical masks one big reason why, Post survey shows," *South China Morning Post*, 1 April 2020, <https://www.scmp.com/news/hong-kong/politics/article/3077761/coronavirus-post-poll-shows-hong-kong-residents-unhappy>.

for residents and medical staff. Another study reflected dissatisfaction with the tardiness of the government's response.<sup>46</sup>

Concerns about face masks and border controls were catapulted into public consciousness in the initial period of the outbreak when the HAEA issued their five demands:<sup>47</sup>

1. To forbid all travellers from entering Hong Kong via China;
2. To implement constructive measures to ensure a sufficient supply of masks;
3. To provide sufficient isolation wards, to stop all non-emergency services;
4. To provide sufficient support and facilitation for healthcare staff caring for patients under isolation; and
5. To publicly commit to not taking any disciplinary actions in retaliation.

These demands implied that the public health system in Hong Kong risked being overwhelmed to the detriment of all if stronger measures were not rapidly put in place. As we have seen, stronger public health measures did soon follow. Even if the strike did not directly instigate these governmental interventions, it sent a clear signal to the public to take proactive measures to protect itself, thereby also protecting the public healthcare system and its beneficiaries. Strong social response in the adoption of public health hygiene practices from previous experience with the SARS outbreak, followed by strict border controls, active testing, and contact tracing by public health authorities have enabled the outbreak to be contained without a complete lockdown of the city.<sup>48</sup>

As in many other jurisdictions, aggressive and pervasive public health measures focused on social distancing, testing, and contact tracing, along with supporting public health regulations, were quickly put in place as the number of local infections grew in Hong Kong. The effectiveness of these measures is backed by scientific evidence, although they provide only a partial account of the success in containing local transmission. In the particular socio-political context of Hong Kong, the strike by healthcare workers arguably had a pivotal role in catalyzing robust responses to the outbreak on the part of the government on

<sup>46</sup> Dewey Sim, "From Hong Kong to Britain, governments ranked poorly for their response to Covid-19," *South China Morning Post*, 6 May 2020, <https://www.scmp.com/week-asia/politics/article/3083185/coronavirus-mainland-chinese-impressed-their-leaders-hongkongers>.

<sup>47</sup> "Healthcare Workers: Together We Stand, Strike to Protect Hong Kong," HAEA, 1 February 2020, <https://www.facebook.com/HA.EmployAlliance/posts/137652757705865/>.

<sup>48</sup> Sarah Boseley, "Test and trace: lessons from Hong Kong on avoiding a coronavirus lockdown," *The Guardian*, 17 April 2020, <https://www.theguardian.com/world/2020/apr/17/test-trace-lessons-hong-kong-avoiding-coronavirus-lockdown>; Matthew Keegan, "How Hong Kong Flattened the Curve Without Total Lockdown," *U.S. News*, 22 April 2020, <https://www.usnews.com/news/cities/articles/2020-04-22/how-hong-kong-flattened-the-curve-without-total-lockdown>.

the one hand and the public on the other.<sup>49</sup> While Article 27 of the Basic Law provides for the right to strike, the strike called for by the HAEA was drastic and unprecedented.<sup>50</sup>

The legality of the strike action and the constitutionality of statutory limits on healthcare workers' right to strike are unclear. Case law indicates that the right to strike is not unlimited, and any industrial action should be reasonable and necessary. Specifically, trade union activities, including strikes, can only take place at an appropriate time.<sup>51</sup> The Employment Ordinance defines "appropriate time" as outside the employee's working hours or "within his working hours at which, in accordance with arrangements agreed with or consent given by or on behalf of his employer, it is permissible for him to take part in those activities."<sup>52</sup> In *Campbell Richard Blakeney Williams v. Cathay Pacific Airways Ltd.* [2012] HKEC 1311, the Hong Kong Court of Final Appeal indicates that workers need the consent of their employers if they seek to exercise their constitutional right to strike during working hours and not run the risk of dismissal.

The constitutional right to strike can also be limited for employees engaged in essential state services. In a 1990 case involving a threat by the Hong Kong Postmaster General to dismiss, suspend, or discipline the unionists if they proceeded with a sit-in, the International Labour Organization committee found that the Postmaster General's threat of retaliatory measures violated the workers' basic right to organize their administration and activities under Article 3 of Convention No. 87 (ILO 1948).<sup>53</sup> The Committee held (at Paragraph 462):

[T]he right to strike in its different forms (including the sit-in), as long as it is exercised peacefully, is one of the essential means through which workers and their organisations may promote and defend their economic and social interests . . . It follows that restrictions or even prohibitions of the right to strike can only be justified in a limited number of situations: civil service—civil servants being those who act as agents of the public authorities—or workers in essential services in the strict sense of the term, i.e. those services whose interruption would endanger the life, personal safety or health of the whole or part of the population . . . provided however these workers have access to adequate

<sup>49</sup> The freedom of association is related to the freedom of information; see Wu, Chapter 5, this volume.

<sup>50</sup> The strike has been reported to be professionally and ethically contentious. See Chris Lau and Lilian Cheng, "Coronavirus: newborns and cancer patients at risk as Hong Kong nurses strike over government response to outbreak," *South China Morning Post*, 4 February 2020, <https://www.scmp.com/news/hong-kong/health-environment/article/3048890/coronavirus-newborns-and-cancer-patients-risk>.

<sup>51</sup> Section 21B(1)(b) of the Employment Ordinance (Cap. 57).

<sup>52</sup> Section 21B(3).

<sup>53</sup> *Case 1553 v. United Kingdom* (ILO 1990).

procedures, such as conciliation and arbitration, where the parties concerned can participate at all stages and in which the awards are binding on both parties and are fully and promptly implemented, in order fully to safeguard the interests of the workers thus deprived of an essential means of defending their occupational interests.

Perhaps with these reasons in mind, the executive vice-chairman of the conservative New People's Party, Mr. Tung-kuok Lai, observed that the HAEA-led strike did not satisfy legal requirements, as it did not relate to employment conditions of civil servants who provide essential services, and the HA did not have the authority to close checkpoints.<sup>54</sup> He added that the HAEA should instead have petitioned and expressed their views through the normal channels without affecting their work. The strike has also been contentious among healthcare workers. A doctor was reported to have considered the strike inappropriate as the healthcare system was already overwhelmed because of the seasonal flu. There were also concerns about the alleged doxing<sup>55</sup> of doctors not in support of the strike.<sup>56</sup>

Other considerations, however, support the claim that healthcare workers have a constitutional right to strike even if they are civil servants, provided that certain conditions relating to the delivery of essential services are satisfied and that such a right should not be unduly restricted as they should not be treated as employees in a conventional sense.<sup>57</sup> Doctors striking in the United Kingdom, for instance, have made arrangements to ensure that patients receive emergency care or other care urgently required on that day,<sup>58</sup> and studies have found strikes by doctors to have had little to no effect on patient mortality.<sup>59</sup> Healthcare workers, particularly nurses and doctors, are expected to have a genuine

<sup>54</sup> Joseph Li, "Medical workers' strike has 'no legal mandate,'" *China Daily*, 8 February 2020, <https://www.chinadailyhk.com/article/120502>.

<sup>55</sup> The practice of exposing illicitly acquired private information.

<sup>56</sup> Li, "Medical workers' strike has 'no legal mandate'"; see also Alex Lo, "What one public doctor thinks about the Hong Kong medics' strike," *South China Morning Post*, 4 February 2020, <https://www.scmp.com/comment/opinion/article/3048968/what-one-public-doctor-thinks-about-medics-strike>.

<sup>57</sup> Stephen L. Thompson and J. Warren Salmon, "Strikes by physicians: A historical perspective toward an ethical evaluation," *International Journal of Health Services* 36 (2016):331–354, <https://doi.org/10.2190/B5CX-UX69-45LY-2D6D>.

<sup>58</sup> John J. Park and Scott A. Murray, "Should Doctors strike?," *Journal of Medical Ethics* 40 (2014):341–342, <http://dx.doi.org/10.1136/medethics-2013-101397>.

<sup>59</sup> Milagros Ruiz, Alex Bottle, and Paul Aylin, "A retrospective study on the impact of the doctors' strike in England on 21 June 2012," *Journal of the Royal Society of Medicine* 106 (2013): 362–369, <https://doi.org/10.1177/0141076813490685>; David Metcalfe, Ritam Chowdhury, and Ali Salim, "What are the consequences when doctors strike?," *BMJ* 351 (2015): h6231, <https://doi.org/10.1136/bmj.h6231>; Daniel Furnivall, Alex Bottle, and Paul Aylin, "Retrospective analysis of the national impact of industrial action by English junior doctors in 2016," *BMJ Open* 8 (2018): e019319, <https://doi.org/10.1136/bmjopen-2017-019319>.

professional ethic of service to their patients, distinguishing them from *employee* in the conventional sense (in the cases considered earlier), since neither a flight attendant nor a postal worker is expected to prioritize customers' interests above their own. Additionally, if a healthcare provider is under ethical and legal obligation to warn a patient of imminent harm that a healthcare setting presents, should there not be a similar obligation for healthcare professions to do the same when an imminent threat is posed to the public health system and, by extension, the health of the population?<sup>60</sup>

#### 4. Conclusion

It is beyond the scope of this chapter to provide a detailed analysis of the public law implications of industrial action by healthcare workers or the constitutionality of legal restrictions imposed on such an action within a socialized system of healthcare. Our goal is simply to proffer an observation that the HAEA-led strike could have had an overall positive effect on the containment of the Covid-19 outbreak in Hong Kong. This effect did not arise from the five demands of the HAEA being met, but rather from the strong signal the strike sent that the public healthcare system was at imminent risk of being overwhelmed. There may well have been means of communication between healthcare professions and the government that were less drastic and more effective. Negotiations were held with the HAEA and the HA before and during the strike, but the HAEA clearly did not consider its concerns to be addressed. In choosing to strike, the HAEA raised public awareness of the danger of Covid-19 at a crucial moment in the unfolding pandemic. As surgeon Darren Mann observes, it is ironic that Hong Kong is now stopping to clap for the healthcare workers who were harassed during the protests and that the attitude toward them has not always been appreciative.<sup>61</sup>

<sup>60</sup> Mark Toynbee et al., "Should junior doctors strike?," *Journal of Medical Ethics* 42 (2016): 167–170, <http://dx.doi.org/10.1136/medethics-2015-103310>.

<sup>61</sup> Darren Mann, "Health care workers deserve our steadfast support, not just during a coronavirus pandemic," *South China Morning Post*, 2 May 2020, <https://www.scmp.com/comment/opinion/article/3082472/health-care-workers-deserve-our-steadfast-support-not-just-during>.

PART IV  
POLITICS, RELIGION, AND  
GOVERNANCE



# Religion amid the Pandemic: A Buddhist Case Study

*Benjamin Schonthal\* and Tilak Jayatilake\*\**

## 1. Introduction

Like many other domains of life, religion has been significantly affected by Covid-19. Social-isolation orders have forced religious leaders and devotees to alter their practices and to stay away from shared ritual spaces such as churches, mosques, and temples. The suppressing impacts of Covid-19 on religious activities make for an especially sad irony. Restrictions on the practice of religion come at the very moment when people are in special need of religious consolation in the form of blessing, prayer, healing, and community support. In normal times, people throughout Asia turn to religion to deal with hardships. They appeal to the Goddess or the Virgin Mary for help with childbirth. They visit famous Buddhist holy places to make merit or travel to the tombs of Sufi sheiks to seek protection from danger. They call upon religious leaders and fellow adherents for guidance, support, and, in some cases, material or financial assistance.

At the same time that Covid-19 creates unique challenges for religious persons and groups, it also places increased demand on religious resources. This chapter examines these dynamics and explores the strategies that religious groups are using to cope with a crisis that has simultaneously damaged the financial, spiritual, and organizational capacities of religion while also making those capacities more important than ever. In what follows, we ask two questions: (1) What changes have religious communities made to their usual procedures for conducting rituals, undertaking offerings, ministering to congregations, and other routine activities? (2) What special religious resources have these groups turned to in order to ward off Covid-19, manage

\* Associate Professor of Buddhism and Asian Religions, University of Otago (<https://orcid.org/0000-0002-3091-6576>).

\*\* Associate Director, Inter-Collegiate Sri Lanka Education (ISLE) Program.



the anxieties of adherents, protect devotees, or ensure the welfare of ritual specialists?

Religious communities throughout Asia have had to change as a result of the pandemic. To survey all responses is beyond the scope of this chapter. When it comes to religion, Asia is an incredibly diverse region. Not only is it home to all of the major world religions—including Judaism, Islam, Taoism, Buddhism, Hinduism, and Christianity—but it is also a region of remarkable intra-religious diversity.<sup>1</sup> This makes broad generalizations difficult. In this chapter, therefore, we pair cautious generalization with case-specific detail. We draw on published reports and academic articles to offer some broad reflections about religion and Covid-19 in Asia. We then draw on telephone interviews with Buddhist monastics and analyses of national and social media, along with data taken from ongoing research projects, to analyze Covid-19's effects on religion in one relatively small case study, Buddhist communities in Sri Lanka. Pairing broad observations with a single case study is helpful because it enables scholars to see both the subtle and large changes that Covid-19 has produced while also generating comparative reflections from the inside out—suggesting that particular dynamics of religious change visible in one setting can also be observed in religious communities across the region.

As we will show, Sri Lankan Buddhist communities face a variety of challenges which are also faced by other religious groups in Asia. These include avoiding close contact with co-worshippers, addressing economic depression among devotees and institutions, and managing the new legal and administrative restrictions proposed by government. Also like other religious groups, Sri Lankan Buddhists have proposed their own range of religious solutions to the unfolding crisis. These include special forms of public blessing, social service activities, and alterations to public ceremonies and rituals. Looking at Buddhists' responses to Covid-19 in Sri Lanka illuminates not only the depth and extent of the disease's impact on societies in Asia, but it also highlights the creative and (in some cases) unprecedented changes to religion that have come from the pandemic. Scholars of religion have made careers out of theorizing religious change over long periods of time. Transformations to religion brought about by Covid-19—to the extent that they last—may provide a rare opportunity to observe the reconfiguration of religious practice in real time.

<sup>1</sup> On the category of “world religions” and its history, see Tomoko Masuzawa, *The Invention of World Religions: Or, How European Universalism Was Preserved in the Language of Pluralism* (Chicago: University of Chicago Press, 2005).

## 2. Religion and Covid-19 in Asia: The Big Picture

While religious communities across Asia have responded differently to the virus, one can observe certain general features and responses that seem to be shared among all of them. One of the most omnipresent and dramatic changes that religious groups face is the requirement to stay at home and away from normal places of worship. Among the various faith communities in the region, these restrictions have hit Muslims and Christians particularly hard, given the expectation or obligation that those religionists will pray together as community, either daily or weekly. In Indonesia, for example, which is home to the world's largest Muslim population, the country's main Islamic organizations—the Indonesian Council of Ulama (MUI), Nahdlatul Ulama, and Muhammadiyah—all issued *fatwas* calling on adherents to pray at home rather than going to mosques.<sup>2</sup> In the Philippines, where roughly 86 per cent of the country identifies as Catholic, the Catholic Bishops Conference asked devotees to stay home during one of the holiest ceremonies of the year, the Palm Sunday mass. Instead it broadcast the event by television, radio, and internet, a request that transformed the usual religious behaviors of roughly 80 million people.<sup>3</sup> Similar requests for worshippers to stay home during the important Buddhist holiday of Vesak could be found in the Buddhist-majority countries of Sri Lanka and Thailand; the Dalai Lama also issued his own statement.<sup>4</sup>

All of these changes have been essential, given that religious gatherings have caused some of the largest spikes in virus transmission across the Asian region. At one stage in the infection cycle in Malaysia, for example, nearly two-thirds of the country's confirmed cases could be traced to a week-long gathering hosted by the Tablighi Jamaat, a Muslim missionary group.<sup>5</sup> Similarly sharp spikes in infection were seen in the aftermath of a conference by the same group in India.<sup>6</sup>

<sup>2</sup> Nadirsyah Hosen, "When Religion Meets Covid-19 in Indonesia: More than a Matter of Conservatives and Moderates," *Indonesia at Melbourne*, 28 April 2020, <https://indonesiaatmelbourne.unimelb.edu.au/when-religion-meets-covid-19-in-indonesia-more-than-a-matter-of-conservatives-and-moderates/>.

<sup>3</sup> Xianne Arcangel, "Catholic Church Celebrates Palm Sunday Mass Online amid Coronavirus Crisis," *CNN Philippines*, 5 April 2020, <https://cnnphilippines.com/news/2020/4/5/Catholic-Church-celebrates-Palm-Sunday-mass-online-amid-coronavirus-crisis.html>.

<sup>4</sup> Emily De Maio Newton and Karen Jensen, "Buddha's Quarantine Birthday," *Tricycle: The Buddhist Review*, 9 May 2020, <https://tricycle.org/trikedaily/vesak-2020/>; "Observe Vesak at Home – Maha Nayaka Theras," *Sunday Observer*, 3 May 2020, <http://www.sundayobserver.lk/2020/05/03/news/observe-vesak-home-%E2%80%93-maha-nayaka-theras>.

<sup>5</sup> A. Ananthalakshmi and Joseph Sipalan, "How Mass Pilgrimage at Malaysian Mosque Became Coronavirus Hotspot," *Reuters*, 17 March 2020, <https://www.reuters.com/article/us-health-coronavirus-malaysia-mosque-idUSKBN2142S4>.

<sup>6</sup> Devjyot Goshal, Aftab Ahmet, and Alasdair Pal, "The Religious Retreat That Sparked India's Major Coronavirus Manhunt," *Reuters*, 3 April 2020, <https://www.reuters.com/article/us-health-coronavirus-india-islam-insigh-idUSKBN21K3KF>.

It is not only Muslim gatherings that have been linked to super-spreading events, however. In early March, at a highpoint for the spread of Covid-19 in South Korea, more than half of that country's infections could be traced to members of a single "fringe" Christian group, whose leaders were charged with "homicide, causing harm and violating the Infectious Disease and Control Act."<sup>7</sup> Other clusters of cases, albeit on a smaller scale, were traced to particular Christian churches in Singapore and Sri Lanka.<sup>8</sup>

Throughout the world, the economic and health effects of the pandemic, as well as the remediating measures necessary to stem the disease (such as lockdowns and other legal restrictions), have frayed social ties and brought long-standing frustrations and acrimonies to the foreground. As part of this, religion-based animosities have flared up. Widely publicized stories linking coronavirus infections to particular religious groups and events have, in numerous cases, led not only to criminal charges being filed but also to larger organized and grassroots campaigns against particular communities. These antagonisms not only follow along inter-religious lines, such as Hindus versus Muslims, but also along intra-religious lines. For example, some denominations of Christianity or Islam have directed their anger at particular churches or subgroups associated with the same world religion. Comparing the governmental and popular reactions to the Tablighi Jamaat in the aftermath of their super-spreading events in Malaysia and India is instructive in this respect. In the Muslim-majority country of Malaysia, suspicion and acrimony tended to be directed toward particular individuals and Tablighi sect leaders.<sup>9</sup> In the Hindu-majority country of India, which has seen a rise in anti-Muslim prejudice under the Modi regime, public anger has not been directed so much at the Tablighi group itself as to Muslims in general.<sup>10</sup> Similarly, in South Korea, where roughly one-third of the population identifies as Christian, angry public voices identified the culprits not as Christians but as members of a pernicious and heterodox "cult."<sup>11</sup> Similar dynamics can

<sup>7</sup> Laura Bicker, "Coronavirus: South Korea Religious Leader to Face Probe over Deaths," *BBC News*, 2 March 2020, <https://www.bbc.com/news/world-asia-51695649>.

<sup>8</sup> Kok Xinghui, "Covid-19 Brings Spiritual Battle to Christians in Singapore and Hong Kong," *South China Morning Post*, 23 February 2020, <https://www.scmp.com/week-asia/health-environment/article/3051932/coronavirus-spurs-singapore-and-hong-kong-christians>.

<sup>9</sup> See Hosen and Hammado, Chapter 21, this volume.

<sup>10</sup> Jeffrey Gettleman, Kai Schultz, and Suhasini Raj, "In India, Coronavirus Fans Religious Hatred," *The New York Times*, 12 April 2020, <https://www.nytimes.com/2020/04/12/world/asia/india-coronavirus-muslims-bigotry.html>; see also Tremblay and George, Chapter 12, this volume.

<sup>11</sup> Choe Sang-Hun, "He Blames 'Evil' for South Korea's Coronavirus Surge. Officials Blame Him," *The New York Times*, 2 March 2020, <https://www.nytimes.com/2020/03/02/world/asia/coronavirus-south-korea-shincheonji.html>; Arjuna Ranawana, "Jaffna Philadelphia Church parishioners asked to self-quarantine after Pastor gets COVID19," *EconomyNext*, 21 March 2020, <https://economynext.com/jaffna-philadelphia-church-parishioners-asked-to-self-quarantine-after-pastor-gets-covid19-60782>, <https://economynext.com/jaffna-philadelphia-church-parishioners-asked-to-self-quarantine-after-pastor-gets-covid19-60782/>; see also Chung and Lee, Chapter 16, this volume.

be observed in Japan, which has a substantial Buddhist population; there, “new religious movements” were the object of special reproach rather than Buddhist communities *en masse*.<sup>12</sup>

Concurrent with the rise in inter- and intra-religious antipathies, however, have been concerted attempts on the part of many religious communities to develop their own responses to help combat the virus and its damaging effects on the community. These responses take the form of both traditional social service activities (of fundraising and material donations) as well as more creative measures taken from a larger repertoire of spiritual and ritual practices. In Beijing, Protestant churches raised thousands of dollars to buy personal protective equipment and hand sanitizer for front-line workers in Wuhan during the escalation of the virus in February 2020. Taoist temples in China also took part in rituals to purify the land around Wuhan in order to eradicate the disease and prepare the land for new temporary hospitals to be built.<sup>13</sup> Buddhist monks in Bangkok not only offered free meals for virus-affected members of the community, but they also led an initiative to produce much-needed face masks for the country by weaving a mixture of recycled plastic fibre and cotton thread, in some cases adding Buddhist prayers and sacred diagrams to the protective equipment to further help the wearers ward off danger.<sup>14</sup> Hindu gurus in India have prescribed traditional health-boosters such as Ayurveda, yoga, and the drinking of cow urine as palliatives.<sup>15</sup>

Across the region and the world, all types of religious leaders—Buddhist monks, Catholic priests, and others—took to the air, going by helicopter or small plane, to sprinkle holy water and intone prayers over virus-hit cities and countrysides.<sup>16</sup> Even governments adopted supernatural tactics to resist the virus. In Indonesia, for example, one municipality deployed a group of young persons dressing as ghosts to help frighten people into staying in their homes.<sup>17</sup>

<sup>12</sup> Levi McLaughlin, “Japanese Religious Responses to COVID-19: A Preliminary Report,” *The Asia-Pacific Journal* 18, no. 9 (2020): 3–4.

<sup>13</sup> Ian Johnson, “Religious Groups in China Step Into the Coronavirus Crisis,” *The New York Times*, 23 February 2020, <https://www.nytimes.com/2020/02/23/world/asia/china-religion-coronavirus-donations.html>.

<sup>14</sup> Pitcha Dangprasith and Lillian Suwanrumpha, “Thai Monks Make Virus Masks from Recycled Plastic,” *Agence France-Presse (via The Jakarta Post)*, accessed 17 April 2020, <https://www.thejakartapost.com/seasia/2020/03/24/thai-monks-make-virus-masks-from-recycled-plastic.html>; “Thai Temple ‘Wat Arun’ Offers Free Meals for People Affected by Coronavirus ‘Lockdown’ – Pattaya Mail,” *Pattaya Mail*, 3 April 2020, <https://www.pattayamail.com/coronavirus/thai-temple-wat-arun-offers-free-meals-for-people-affected-by-coronavirus-lockdown-294006>.

<sup>15</sup> Aarti Betigeri, “In India, Praying the Covid Away,” *The Interpreter*, 24 March 2020, <https://www.lowyinstitute.org/the-interpreter/in-india-praying-covid-away>.

<sup>16</sup> For example, “Burmese Monks Protect Myanmar from the Coronavirus by Chanting Buddhist Suttas Aboard a Helicopter,” *Burma Dhamma Blog, Insight Myanmar*, 17 March 2020, <https://insightmyanmar.org/burmadhammablog/2020/3/17/burmese-monks-protect-myanmar-from-the-coronavirus-by-chanting-buddhist-suttas-aboard-a-helicopter>.

<sup>17</sup> “‘Ghosts’ Used for Virus Patrol in Indonesia Town,” *BBC News*, 13 April 2020, <https://www.bbc.com/news/world-asia-52269607>.

### 3. Changes to Buddhist Practices

What can be seen in a broad way across Asia—a combination of unavoidable alterations in how devotees practice religion and concerted religious responses combatting the disease—can also be seen in microcosm in the Buddhist communities of Sri Lanka. Like other religious communities, Buddhists rely on face-to-face interactions and communal rituals to practice their religion. There are regular prayers and sermons at Buddhist temples, such as the monthly full-moon holiday of *poya day*. There are processions, pilgrimages, and festivals, such as Vesak (mentioned earlier), an annual event commemorating the birth, death, and nirvana of the Buddha, which is celebrated across the country over several days in April or May. There are important life-cycle rituals such as birthdays, funerals, and death anniversaries during which Buddhists normally host monks in their homes for chanting and blessings. All of these practices have had to be altered to accommodate the new realities of Covid-19 in Sri Lanka. In many cases, ceremonies have been shifted “on air” or online using internet, radio, and television technologies.

The social distancing required in the time of Covid-19 has challenged the usual closeness between regular Buddhist practitioners and the community of monks, known as the *saṅgha*, with whom practitioners regularly interact. The lay-monastic bond is central to Buddhism, and a significant portion of Buddhists’ religious observances depend on this linkage. The dependence runs two ways. Laypersons depend on monks to conduct rituals, chant protective verses, and give dhamma sermons while also maintaining the upkeep and ceremonial schedule of Buddhist temples. Monks depend on laypersons for administrative and material support in the form of logistical help, food, and financial donations so that they can maintain an ascetic lifestyle without having to engage too fully in “worldly” activities. Perhaps the most visible example of the close relationships between monastic and lay communities is the daily practice, seen in many (if not most) temples across the island, of lay families delivering food to monks for their major lunchtime meal.

Even more challenging than these disturbances to the lay-monastic relationship, however, have been the obstacles posed to the monastic community as a whole. Buddhist monks and nuns live together in residential monasteries, some quite large. In some cases, these living arrangements can be dense, making social distancing difficult. Moreover, the protocols and rules of Buddhist monastic rituals require that monks gather together in close proximity in order for the ceremony to be valid. The ancient code of Buddhist monastic law that guides the organizational culture of the *saṅgha*, the *Basket of Discipline* (or, in Pāli, *Vinaya Piṭaka*), even directs monks who are engaged in formal religious procedures to congregate within “an arm’s reach” of each other.<sup>18</sup>

<sup>18</sup> On the rules of Buddhist legal procedure, see Benjamin Schonthal, “Buddhist Rules About Rules: Procedure and Process in the (Theravāda) Buddhist Legal System,” *American Journal of Comparative Law*, forthcoming.

Interestingly, the realities and threats posed by such close human proximity are recognized by Buddhist texts themselves. Among the oldest criteria for becoming a Buddhist monk are, in fact, a set of health screenings that all monks must pass in order to be ordained into the order. These include answering a series of questions about nearly fifty specific illnesses—from leprosy to boils, fever, psoriasis, and asthma—affirming in each case that they do not have any one of them.<sup>19</sup> Candidates with any of these conditions were forbidden from joining the group, presumably in order to avoid the spread illness within monastic residences.

Given these challenges, monks in Sri Lanka have had to change their practices. Preaching and communal rituals have been cancelled. The country's senior monastic prelates have jointly called on citizens to stay home during important holy days but to continue observing the usual rites and customs at home, including preparing traditional foods, meditating, and engaging in prayer.<sup>20</sup> Some monastic groups have even prepared and distributed worship schedules for Buddhist laity to use at home.<sup>21</sup>

The restrictions and financial pressures caused by Covid-19 have prevented some Buddhist families from preparing and delivering food for monks and nuns as they normally do. This has meant, at least for three Buddhist monastics with whom we spoke, that monks and nuns are having to prepare their own food. In Cambodia, the situation has been particularly dire for the country's 60,000 Buddhist monks, with some observers reporting that temple visits have dropped fivefold, leading to severe food shortages for Buddhist monks who depend upon lay offerings of food.<sup>22</sup> Similar shortages have also posed challenges for monks in Thailand.<sup>23</sup> It is a delicate matter for monks and nuns to manage the usual practices of donation in a context where lay supporters are also suffering illness

<sup>19</sup> Gregory Schopen, "Making Men into Monks," in Donald S. Lopez ed., *Buddhist Scriptures* (London: Penguin, 2004), 237–238.

<sup>20</sup> Samantī Virasēkara, "Alut Avuruddē Vyasanaya Turan Kirīmaṭa Kaepavenna; Malvatu Himiyō Janatāvagen Illati [Commit to Destroying This Plague in the New Year; the Malvatu Monk Appeals to the Populace]," *Divayina*, 6 April 2020, <https://divaina.com/daily/index.php/hot-news-2019/40955-2020-04-06-09-20-51>.

<sup>21</sup> Sri Lanka Rāmañña Nikāya, "2020 Vesak Pōya Vaēdasatahan [2020 Vesak Full Moon Day Schedule]," accessed 14 May 2020, [http://slrnm.lk/2020/04/26/%E0%B7%80%E0%B7%99%E0%B7%83%E0%B6%9A%E0%B7%8A-%E0%B6%B4%E0%B7%9D%E0%B6%BA-%E0%B7%80%E0%B7%90%E0%B6%A9%E0%B7%83%E0%B6%A7%E0%B7%84%E0%B6%B1%E0%B7%8A/?fbclid=IwAR0\\_2x3n2PVoPLiBa39XvZ2v68Pjpf8u-HPRQMdhTaRFDSeFZyQhQLtvH7k](http://slrnm.lk/2020/04/26/%E0%B7%80%E0%B7%99%E0%B7%83%E0%B6%9A%E0%B7%8A-%E0%B6%B4%E0%B7%9D%E0%B6%BA-%E0%B7%80%E0%B7%90%E0%B6%A9%E0%B7%83%E0%B6%A7%E0%B7%84%E0%B6%B1%E0%B7%8A/?fbclid=IwAR0_2x3n2PVoPLiBa39XvZ2v68Pjpf8u-HPRQMdhTaRFDSeFZyQhQLtvH7k).

<sup>22</sup> Phorn Bopha, "Monks Face Food Shortages Amid Coronavirus Pandemic," *VOA Cambodia*, 12 April 2020, <https://www.voacambodia.com/a/monks-face-food-shortage-amid-coronavirus-pandemic/5368885.html>.

<sup>23</sup> Mongkol Bangprapa, "Monks Suffering as Strict Distancing Rules Remain," *Bangkok Post*, 7 May 2020, <https://www.bangkokpost.com/thailand/general/1913696/monks-suffering-as-strict-distancing-rules-remain>.

and financial hardships themselves. One monk in Kandy explained that, out of recognition of this fact, the head monk of his monastery actually requested that laity refrain from bringing donations to the temple and even started himself to cook for struggling members of the community.<sup>24</sup>

Despite these disruptions, interviewees reported that daily monastic routines have largely been maintained during these times. With the exception of monks who study or teach at religious schools or universities, life for most Buddhist monks in Sri Lanka revolves around the monastery and the various duties of studying, taking meals, worshipping, and cleaning that go on there—daily rhythms that fit easily with the stay-at-home orders issued by the government. The same cannot be said about Buddhist monks in other parts of Asia, however, where (unlike in Sri Lanka) monks must enter nearby towns and villages daily to go on “alms rounds” to obtain their meals.<sup>25</sup>

#### 4. Buddhist Responses to Covid-19 in Sri Lanka and Elsewhere

In Sri Lanka, as in other countries, Buddhist monks play a central role in ministering and perpetuating the religion. Unlike many Christian congregations in Asia, widespread social welfare and disaster-relief work has only recently become a common focus of Buddhist organizations and particularly Buddhist monastic groups.<sup>26</sup> Considering this, the widespread social-service projects that have been led by Buddhist monks in Sri Lanka during the time of the Covid-19 crisis are particularly noteworthy. Between March and May 2020, we observed numerous reports in Sri Lanka’s news media of Buddhist monks engaging in the distribution of material goods to various groups: giving food and drinks to policemen who were patrolling curfew, handing out dry rations and rice to poor families, distributing masks and protective equipment to healthcare workers, and even feeding stray dogs and cats. In some cases, monastic groups donated

<sup>24</sup> Phone interview with senior monk in Kandy, 18 April 2020.

<sup>25</sup> Randy Thanthong-Knight, “Thailand’s Downturn Means Even the Monks Are Going Hungry,” *Bloomberg Quint*, 23 April 2020, <https://www.bloombergquint.com/onweb/thailand-s-downturn-means-even-the-monks-are-going-hungry>.

<sup>26</sup> Neena Mahadev, “Conversion and Anti-Conversion in Contemporary Sri Lanka: Pentecostal Christian Evangelism and Theravada Buddhist Views on the Ethics of Religious Attraction,” in Juliana Finucane and R. Michael Feener, eds., *Proselytizing and the Limits of Religious Pluralism in Contemporary Asia*, ARI – Springer Asia Series (Singapore: Springer, 2014), 211–235, [https://doi.org/10.1007/978-981-4451-18-5\\_11](https://doi.org/10.1007/978-981-4451-18-5_11); Jeffrey Samuels, “Buddhist Disaster Relief: Monks, Networks, and the Politics of Religion,” *Asian Ethnology* 75, no. 1 (2016): 53–74; Charles B. Jones, “Modernization and Traditionalism in Buddhist Almsgiving: The Case of the Buddhist Compassion Relief Tzu-Chi Association in Taiwan,” *Journal of Global Buddhism* 10, no. 0 (2009): 291–319.

large sums of money to the national pandemic response team.<sup>27</sup> The actions taken by Buddhist monastic groups (as well as similar actions taken by other lay and religious organizations) run parallel to government relief programs with the goal of assisting populations seen to be especially that are vulnerable or insufficiently supported by state donation schemes.<sup>28</sup>

Buddhist monks and nuns have also taken steps to combat the spread of the disease using rituals and other supernatural techniques. One of the most widespread practices has been the chanting of protective verses called *pirit* (in Pāli, *paritta*). These verses, which are generally written in the liturgical language of Pāli, appear across the Buddhist textual tradition. They are believed to have the power to ward off various types of danger, including snakebites, ghosts, and illness and disease.<sup>29</sup> It is very common to hear these verses being chanted in Sri Lanka, even before the pandemic. In fact, one of the major religious responsibilities of Buddhist monks and nuns is to recite these verses at important times, such as funerals or anniversaries.

Throughout Sri Lanka—and around Southern Asia—Buddhist monks and nuns have gathered together to recite *pirit* to combat the coronavirus. One *pirit* chant that has been given special attention during the pandemic is the *Girimandanda Sutta*, or “the Discourse for Girimanandana.” This text, which takes the form of a speech given by the Buddha to a very sick monk, contains several lists of bodily illnesses and the accompanying meditations that will alleviate them.<sup>30</sup> At one small hermitage of five nuns in Kandy, for example, the residents have chanted *pirit* verses like this daily at 17:00, broadcasting them over loudspeakers for the local population.<sup>31</sup>

*Pirit* chanting has also been elevated to a national scale. In mid-March 2020, as the infection rate started to rise in Sri Lanka, the heads of the two largest and oldest monastic fraternities organized a national week-long recitation at the island’s holiest Buddhist site, the Temple of the Tooth in Kandy, with senior monks from around the island. Together they repeatedly chanted *pirit* versus thought to combat illness. The organizers chose to focus mainly on the

<sup>27</sup> Cāmara Sampat, “koviḍ aramudalaṭa asgiri saṅgha sabhāven ru miliyana 5-k [5 million Rupees to the Covid fund from the Asgiri Sangha Council],” 27 March 2020, <http://www.ada.lk/religion/කොවිඩ්-අරමුදලට-අස්ගිරි-සංඝ-සභාවෙන්-රු-මිලියන-5ක්/4-359802>.

<sup>28</sup> For example, some of these schemes target young mothers, while others target rural farmers, local villagers, security personnel, or healthcare workers.

<sup>29</sup> On *paritta* and other similar protective technologies in Thailand, see Justin McDaniel, *The Lovelorn Ghost and the Magical Monk: Practicing Buddhism in Modern Thailand* (New York: Columbia University Press, 2013), 72–90.

<sup>30</sup> “Girimananda Sutta: To Girimananda,” (AN 10.60), trans. Thanissaro Bhikkhu, *Access to Insight (BCBS Edition)*, 30 November 2013, <http://www.accesstoinsight.org/tipitaka/an/an10/an10.060.than.html>.

<sup>31</sup> Phone interview with Buddhist nun in Kandy, 17 April 2020.



*Ratana Sutta*, a text that contains verses which the Buddha reputedly recited to inhabitants of the ancient Indian city of Rajagaha during a period of famine and plague.<sup>32</sup> Holy “*pirit water*” (*pirit paen*) that had been blessed during the chanting was then sprinkled on areas that had been affected by the virus from two helicopters. By early April, the same senior monks called for all monks and nuns around the island to chant verses together concurrently every evening. Similar attention to chanting verses can be seen in places like Thailand and Myanmar.

The prevalence of public displays of generosity and support from Buddhist monks has not meant that Sri Lanka has escaped the inter-religious tensions that can be observed in countries such as India. As scholars have pointed out, the zeal that sometimes accompanies activities such as the nationwide *pirit* chanting may also communicate a celebratory Sri Lankan nationalism—or, more precisely, “us-ness” (*apēkama*)—that presents Sinhala Buddhists as protectors of the country, while symbolically marginalizing the island’s other religious and ethnic groups.<sup>33</sup> Muslims in particular have come under scrutiny during the pandemic, a fact that is perhaps unsurprising given the waves of anti-Muslim prejudice and occasional violence that have seized the country before and after the Easter Bombings of 21 April 2019 (the one-year anniversary of which was observed under lockdown).<sup>34</sup> Some of the earliest flashpoints were debates over whether Muslims should be permitted to bury (rather than cremate) victims of the virus in accordance with religious customs, which critics saw as a threat to public health.<sup>35</sup> Islamophobic voices on public and social media have also raised the alarm with regard to high infection rates among Muslim communities, accusing them of lying about their travel or health histories and acting as “super-spreaders” of the disease.<sup>36</sup>

<sup>32</sup> Asela Kuruluwansa, “Ratana Sutta to Be Chanted at Sri Dalada Maligawa,” *Daily News*, 16 March 2020, <http://www.dailynews.lk/2020/03/16/local/214540/ratana-sutta-be-chanted-sri-dalada-maligawa>; see also “Ratana Sutta: The Jewel Discourse” (Sn 2.1), trans. Piyadassi Thera, *Access to Insight (BCBS Edition)*, 30 November 2013, <http://www.accesstoinsight.org/tipitaka/kn/snp/snp.2.01.piya.html>.

<sup>33</sup> Harshana Rambukwell, “Patriotic Science – The Corona Virus Pandemic, Nationalism, and Indigeneity,” *Witnessing Covid-19 in Sri Lanka* (blog), 15 April 2020, <https://witnessingcovid19insrilanka.wordpress.com/2020/04/15/patriotic-science/>. See also Harshana Rambukwella, *The Politics and Poetics of Authenticity* (London: UCL Press, 2018).

<sup>34</sup> Farzana Haniffa, *Buddhist Extremists and Muslim Minorities: Religious Conflict in Contemporary Sri Lanka*, ed. John Clifford Holt (New York: Oxford University Press, 2016), 164–192; Farzana Haniffa, “Merit Economies in Neo-Liberal Times: Halal Troubles in Contemporary Sri Lanka,” in Daromir Rudnyckij and Filippo Osella, eds., *Religion and the Morality of the Market* (Cambridge: Cambridge University Press, 2017), 116–137.

<sup>35</sup> Shereena Qazi and Ashkar Thasleen, “Anguish as Sri Lanka forces Muslims to cremate COVID-19 victims,” *Al Jazeera*, 4 April 2020, online: <https://www.aljazeera.com/news/2020/04/anguish-sri-lanka-forces-muslims-cremate-covid-19-victims-200403053706048.html>.

<sup>36</sup> Kalinga Tudor Silva, *Identity, Infection and Fear: A Preliminary Analysis of Covid-19 Drivers and Responses in Sri Lanka* (Colombo: International Centre for Ethnic Studies, 2020), 24–29.

## 5. Buddhist Understandings of Covid-19

In addition to changing religious institutions and practices, Covid-19 has also sparked new kinds of religious analyses and debates. In Indonesia, for example, the pandemic lockdown has brought to prominence important questions about the nature and purpose of Muslim prayer and whether one's personal welfare or one's duty to God is more important.<sup>37</sup> Similarly, in Sri Lanka, the virus has provided an opportunity for new Buddhist reflections concerning how and why the pandemic evolved and the necessary steps for responding to it.

One common argument relates to the usefulness of Buddhist teachings as a way to address the Covid-19 crisis and to make sense of its origins. As one senior monk from Kandy put it:

A fundamental teaching of Buddhism is to live by restraining (*saiivara kara gena*) the body. Discipline means to restrain the body [and] restraining the body [in this way] for a long time will be helpful for eliminating this pandemic . . . By restraining one's body and one's speech, the state of the world can be improved and we can be free from this situation. Today people's bodies are completely unrestrained: they are like a factory, going day and night. Searching for wealth, powerful countries like America, China and India are burning, working without regard, firing away like a mill . . . There's no restraint is there? Therefore, crises like this can arise. The simple truth of the Buddha's teaching involves the training of the mind and the building of an environment in which people can live for a long time without illness because they develop their own immunities. By developing one's own mind, society will benefit. Personal development helps societal development; the decline of individuals causes societal decline.<sup>38</sup>

This statement encapsulates many of the sentiments that we observed in all ten interviews with Buddhist monks and nuns, as well as in public discussions led by Buddhist monks and lay organizations using electronic media. In a similar manner to the Buddha's teaching, the speaker offers a diagnosis, etiology, and prescription for the pandemic, based on a failure of and potential correction to human personality traits. In this case, the speaker diagnoses the pandemic as coming from the unrestrained behavior of individuals and countries, which contributed to the spread of the disease internationally as well the virulence of the disease among individuals. The solution, he suggested, was to train, discipline, and control one's mind and body, to make it *saiivara*, a word used in Pāli and

<sup>37</sup> Hosen, "Religion Meets Covid-19"; see also Hosen and Hammado, Chapter 21, this volume.

<sup>38</sup> Phone interview with senior monk in Kandy, 18 April 2020.

Sinhala to describe the ideal calm, poise, and comportment of a Buddhist monk. Rather than proposing a top-down solution to the pandemic, he prescribed a program of action that led from personal development to societal change.

Similar arguments and observations appeared in other interviews with Buddhist monastics. In multiple cases, Buddhist monks or nuns linked the onset of the pandemic to environmental degradation, which itself was a result of human greed and lack of compassion. Three interviewees made an explicit link between the agriculture and eating habits of modern people and the rise of diseases. Pointing out that Covid-19 came from a food market in China, one nun made a link between Buddhist ideas and the craving for wild animal flesh: “Buddhism teaches one to control people’s greed, hatred and delusion, which are constantly increasing. Our lives depend on our eating habits; what we eat affects our life.”<sup>39</sup> Another scholar-monk from Kandy explained that pandemics as well as social strife arises from “imbalances” (*samaviṣamatāvayan*) in the environment, which in turn result from a decline in virtues such as compassion. According to interviewees, one solution to this current interlinked crisis—of health, environment, and human greed—was to take inspiration from “traditional” or “village” ways of living, which were environmentally sustainable and also offered their own natural remedies for disease and maintaining health. Similar ideas have appeared prominently in Sri Lanka’s newspapers and in the social media accounts of prominent politicians, many of which have urged Sri Lankans to cultivate their own backyard gardens as a way both to remedy the island’s food-distribution problems and to move toward local (and national) self-sufficiency.

## 6. Conclusion

Along with its effects on the economy, health, and politics in Asia, Covid-19 and the state’s response to it have also affected the region’s religions. The various isolation and social-distancing orders have transformed the ways people engage (or not) with religious teachings and practices. The mass sorrow and death caused by the disease have prompted religious leaders to undertake new or enhanced types of ritual and social service activities in order to assist populations. The pandemic has also led to new, religiously inspired theories of crisis, health, and illness, as devotees try to make sense of events.

Sri Lankan Buddhists provide a vivid case study highlighting all of these effects and responses. Buddhists have had to alter their holiday celebrations and rethink

<sup>39</sup> Phone interview with nun in Kandy, 17 April 2020.

their ritual practices. The virus has prompted some monks to reconceive the traditional relationship between temple and society, emphasizing the redistribution of material goods (back) to lay supporters. The virus has also prompted the sponsorship of large-scale, concerted ritual solutions, such as the spreading of holy water and the nationwide chanting of protective verses, as well as reflections on the origin and nature of the pandemic from a Buddhist point of view.

At the same time, in Sri Lanka and throughout Asia, the epidemic has sharpened and deepened existing lines of inter- and intra-religious acrimony. Alongside the many acts of generosity and selflessness shown by religious leaders have been dangerous acts of scapegoating and vilifying. So alarming are these trends, on a global scale, that the United Nations has warned of a “tsunami of hate” that could follow the pandemic’s spread around the world.<sup>40</sup> (The word “tsunami” has special cautionary force for Sri Lanka, having suffered a catastrophic tidal wave fifteen years earlier.) Yet religions also provide a key site and source for turning the tide of such hatred in Asia. Understanding Covid-19’s effects on religion, therefore, is important to understanding Asia’s future in the post-pandemic world.

<sup>40</sup> Associated Press, “UN Chief Says Pandemic Is Unleashing a ‘Tsunami of Hate,’” *The New York Times*, 8 May 2020, <https://www.nytimes.com/aponline/2020/05/08/world/ap-un-virus-outbreak-hate-speech.html>.



# Bhutan: The Role of the Constitutional Monarch in a Public Health Crisis

*Sonam Tshering\* and Nima Dorji\*\**

## 1. Introduction

On 6 March 2020, Bhutan woke up to the devastating news of the first confirmed Covid-19 case, a seventy-six-year-old tourist from the United States of America.<sup>1</sup> However, within six hours, the Ministry of Health was able to trace all the patient's contacts, having prepared for the worst before this first case had reached Bhutan. The government followed the National Preparedness and Response Plan of 5 February 2020.<sup>2</sup> The implementation of this response plan was observed by His Majesty the Druk Gyalpo Jigme Khesar Namgyel Wangchuck.<sup>3</sup> While the Covid-19 patient was put in an isolation facility and treated by a team of sixteen health personnel, first-degree contacts were quarantined at government-operated facilities and other contacts were ordered to strictly observe self-quarantine at home.

The experience of the initial part of the day was frenzied. Many people panicked and crowded pharmacies to buy masks and hand sanitizer, leading to shortages within a day. Some netizens took to social media to criticize the government, with some demanding resignation of the prime minister and health minister for not suspending the entry of tourists before the first case. By the afternoon of the same day, however, the mood of social media changed from criticizing to uniting with the government. Following international practice, on 15 January, the government issued the first cautionary public notification regarding Covid-19, explaining its common symptoms and setting out precautionary

\* Senior Lecturer, JSW School of Law, Bhutan.

\*\* Senior Lecturer, JSW School of Law, Bhutan.

<sup>1</sup> "Press release: First confirmed Covid-19 case in Bhutan," *Ministry of Health Bhutan, Facebook*, 6 March 2020, [https://www.facebook.com/MoHBhutan/posts/2974352729292990?\\_\\_tn\\_\\_=K-R;Sangay Chezom et al., "Bhutan reports first Covid-19 case," \*Bhutan Broadcasting Service\*, 6 March 2020, <http://www.bbs.bt/news/?p=129299>.](https://www.facebook.com/MoHBhutan/posts/2974352729292990?__tn__=K-R;Sangay%20Chezom%20et%20al.,%20%22Bhutan%20reports%20first%20Covid-19%20case,%22%20Bhutan%20Broadcasting%20Service,%206%20March%202020,%20http://www.bbs.bt/news/?p=129299)

<sup>2</sup> "National Preparedness and Response Plan for Outbreak of Novel Coronavirus (COVID-19)," Cabinet, 25 February 2020, <https://www.cabinet.gov.bt/wp-content/uploads/2020/03/National-Preparedness-and-Response-Plan-3rd-ed-1-1.pdf>.

<sup>3</sup> The reigning king (Druk Gyalpo, translates as "Dragon King"). He is the fifth in the Wangchuck Dynasty.

measures.<sup>4</sup> It had already put in place thermal scanners and other screening facilities at the Paro International Airport and land crossings along the southern border. The government used all forms of media to raise awareness of the international Covid-19 situation. By mid-May, Bhutan (with a population of 735,553) had twenty-one confirmed cases, with five fully recovered, fourteen still in isolation, and no deaths.<sup>5</sup> There was no community transmission; all cases were imported.

Bhutan's monarchs maintained that, as a small country with a small population, the kingdom could overcome any challenge so long as people and the government worked together. The harmonious unity of the king, government, and people guided by the values and principles of interdependence, mutual respect, compassion, and a spirit of humanhood is cited as one of Bhutan's enduring strengths. In this chapter, we explore Bhutan's response to the Covid-19 situation, from multiple (social, economic, political, legal, and cultural) perspectives inspired by the leadership of the king; we also discuss the challenges Bhutan has faced and consider how the country could mitigate these challenges in confronting public health or similar crises in the future.

## 2. Bhutan's Responses against Covid-19

Bhutan started preparing for the arrival of SARS-CoV-2 well before its arrival in Bhutan. Government officials closely monitored the situation around the world, issuing frequent travel advisories. When the first case of Covid-19 was confirmed, Parliament was in session. The health minister continued to report to the Parliament on policies and plans, initiatives, and preparations of her ministry. The Ministry diverted its budget for developing and implementing its strategic plan, which involved procuring testing kits in advance, identifying and purchasing equipment and facilities for isolation wards and quarantine facilities across the country, and creating public awareness programs. As a precautionary measure, the government increased border surveillance and required mandatory declarations of health conditions and travel history for all those entering Bhutan. Gradually, the government refused entry to those travellers who had travel history in recently affected countries, and fever scans were made compulsory at the international airport and overland entry points in southern Bhutan.

<sup>4</sup> "Cautionary Notification on Pneumonia Outbreak in China!" Ministry of Health Bhutan, Facebook, 15 January 2020, <https://www.facebook.com/MoHBhutan/photos/a.771480979580187/2866594920068772/?type=3&theater>.

<sup>5</sup> "National Situational Update on Covid-19 as of 12th May 2020," Ministry of Health, 12 May 2020, <http://www.moh.gov.bt/national-situational-update-on-Covid-19-as-of-12th-may-2020/>.

Before the confirmation of the first case of Covid-19 in Bhutan, offices, business, and educational institutions remained open. However, immediately after the first case emerged, the government closed all educational institutions in four districts<sup>6</sup> and eventually nationwide.<sup>7</sup> It also immediately closed its borders to incoming foreigners.<sup>8</sup> Later, the government also suspended the issuance of new passports,<sup>9</sup> and required citizens to obtain permission to travel outside Bhutan. However, the government facilitated the evacuation of Bhutanese from other countries.

While these gradual interventions were implemented, a second patient tested positive the day before she was to be released from quarantine. This led to the public calls on social media to raise the quarantine period to three weeks. Though the government at first insisted on keeping the period at two weeks based on the WHO recommendation and international practices, upon the recommendation of the Parliamentary Committee for Covid-19 Preparedness and Response (the Parliamentary Committee)<sup>10</sup> and the advice of the His Majesty the King, the quarantine period was extended to three weeks. On 22 March 2020, the king announced the closure of international borders to all movement except the transportation of essential commodities and supplies.<sup>11</sup> The government also closed entertainment businesses and other nonessential businesses with higher risks. A few days after, all sports, games, picnics, and other similar activities requiring physical contact were suspended.<sup>12</sup> While the government initially allowed home quarantine, it later (on 16 March) required mandatory quarantining at government-operated facilities for all individuals entering Bhutan as a precautionary measure.

With thousands of Bhutanese arriving from other countries and challenges in maintaining physical distance, the government ordered the closure of all businesses by 19:00 every day. Further, all public transports including taxis were authorized to carry only half of their capacity. These interventions were adopted to ensure the prevention of community transmission from possible infected

<sup>6</sup> Karma Yuden, "How Thimphu, Paro and Punakha Dzongkhag administrations have prepared for Covid-19," *The Bhutanese*, 8 March 2020, <https://thebhutanese.bt/how-thimphu-paro-and-punakha-dzongkhag-administrations-have-prepared-for-covid-19/>.

<sup>7</sup> Notification on the closure of educational institutions, 17 March 2020, Notification – Ref. No. MOE/EEOC/ (1)/2020/551.

<sup>8</sup> Notification on the issuance of visas, work permits, and other immigration permits, 2020, Notification – Tha (01)/2136).

<sup>9</sup> Mandatory quarantine and suspension of issuance of passports, 16 March 2020, Notification – MFA/DoP/PD-03/2020/14.

<sup>10</sup> It is joined with the Parliamentary Committee, consisting of apolitical members from the National Council and political members from the National Assembly.

<sup>11</sup> National Address, 22 March 2020.

<sup>12</sup> "Press release from Prime Minister's Office," Information and Advisories on Covid-19, Government of Bhutan, 27 March 2020, <https://www.gov.bt/covid19/?p=924>.



individuals who had completed their quarantine period. Those who tested positive were kept in isolation and treated until testing negative twice.

### 3. The Constitutional Monarch's Role in Managing the Pandemic

The king, as constitutional monarch, played a critical role by demonstrating strong leadership, uniting the people behind a common cause of implementing the country's response to Covid-19.

#### A. The Leadership of the King—The Legacy Continues

Many Bhutanese credit their country's success as an independent nation and its unprecedented progress to its succession of kings. Bhutan became a monarchy by signing a historic social contract in 1907 with the appointment of Sir Ugyen Wangchuck as the first hereditary King of Bhutan. The establishment of the Wangchuck Dynasty put an end to centuries-old infighting and political instability, restoring peace and unity and marking the monarchy as a symbol of unity and stability. Strikingly, the fourth King of Bhutan devolved the power to people by initiating the drafting of the constitution and transforming Bhutan from an absolute monarchy to democratic constitutional monarchy in 2008, in which the king now stands as the symbol of the unity of the nation and the people.<sup>13</sup>

The king as the symbol of unity is more than a formal symbolism. The success of royal leadership is reflected in the Bhutanese people's reverence for the monarchs. Their Majesties have been a practical example of Robert Greenleaf's "servant leadership"—leading by the example and beyond by serving first.<sup>14</sup> In this trying time of the Covid-19 pandemic, the king is at the forefront in serving the people. When the first Covid-19 case was confirmed, the king left the side of his pregnant queen and spent the whole night observing the implementation of response plan at the Ministry of Health. While many panicked the next day, His Majesty commanded that citizens treat the first Covid-19 patient with compassion and care,<sup>15</sup> directing that he

<sup>13</sup> *The Constitution of the Kingdom of Bhutan*, 2008, art. 2.

<sup>14</sup> Robert K. Greenleaf, *Servant Leadership: A Journey into the Nature of Legitimate Power and Greatness* (New York: Paulist Press, 1977).

<sup>15</sup> Joanna Slater, "A king, a ventilator, an 8,000-mile journey: One American's coronavirus rescue from Bhutan," *The Washington Post*, 14 May 2020, [https://www.washingtonpost.com/world/asia\\_pacific/bhutan-coronavirus-american-tourist-evacuation/2020/05/13/2f43f1e6-8f16-11ea-9322-a29e75effc93\\_story.html?fbclid=IwAR0w9iA3JtFyXdpNITJmccqu9jfQgqfkzCorhO5sFjht5aNy030x3IPHVY](https://www.washingtonpost.com/world/asia_pacific/bhutan-coronavirus-american-tourist-evacuation/2020/05/13/2f43f1e6-8f16-11ea-9322-a29e75effc93_story.html?fbclid=IwAR0w9iA3JtFyXdpNITJmccqu9jfQgqfkzCorhO5sFjht5aNy030x3IPHVY).

be given the best care possible as a guest and that citizens avoid condemning him for importing Covid-19 into Bhutan. Amid the pandemic, the queen gave birth to a royal son, but the king had no time to spend with the queen and their son; he was travelling around the country to review preparedness and response plans.

Such leadership quality is not limited only to the reigning king. The successive kings have ruled based on the values of generosity, morality, honesty and integrity, tolerance, and self-sacrifice for the good of the people.<sup>16</sup> The king is revered as the father of welfare (*Kidui Pham*). Traditionally, *kidu*<sup>17</sup> takes such forms as (but is not limited to) cash and other relief to victims of natural disasters and other tragedies as well as land grants to ensure equitable distribution of income and opportunity.<sup>18</sup> The Fourth King Jigme Singye Wangchuck, the father of the Constitution and the Gross National Happiness (GNH), literally led the military operation against the Indian militants residing within Bhutan's southern borders, risking his life, in 2003.<sup>19</sup> Bhutan was then in the process of drafting the written constitution. In his address to the Constitution Drafting Committee, he said, "it would be pointless to adopt the constitution before securing the nation, therefore, we have decided to remove militants from our soil by force as all peaceful discussions have failed."<sup>20</sup> The First King Sir Ugyen Wangchuck and his father Jigme Namgyel not only fought civil wars to unite Bhutan but also fought a war against British India and played an important role in establishing a bilateral relationship to secure Bhutan's sovereignty.<sup>21</sup> This is not first time that Bhutan has faced the challenges of an epidemic. In each past outbreak, the people have trusted the leadership of the kings to contain it.<sup>22</sup> The reigning king pledged to continue this legacy, and he continues to live by his words.<sup>23</sup>

<sup>16</sup> Francoise Pommaret, "The Cakravatin King: Symbolism of the Bhutanese Monarchy," [https://www.academia.edu/21692687/The\\_Cakravartin\\_King\\_Symbolism\\_of\\_the\\_Bhutanese\\_Monarchy](https://www.academia.edu/21692687/The_Cakravartin_King_Symbolism_of_the_Bhutanese_Monarchy).

<sup>17</sup> *Kidu* literally means "grant."

<sup>18</sup> Nima Dorji and Michael Peil, "Bhutan," in David Law, Holning Lau, and Alex Schwartz, eds., *Oxford Handbook of Constitutional Law in Asia* (London: Oxford University Press), forthcoming.

<sup>19</sup> Tenzing Lamsang, "The militants matched us almost evenly in manpower and weapons but we had His Majesty the Fourth King: Goonglen Batoo Tshering," *The Bhutanese Newspaper, Facebook*, 7 November 2020, <https://www.facebook.com/TheBhutaneseNewspaper/posts/738665072906092>.

<sup>20</sup> The Fourth King's address to the Constitution Drafting Committee during the submission of the first draft on 9 November 2002.

<sup>21</sup> Karma Phuntsho, *The History of Bhutan* (India: Penguin Books, 2013), 441–468.

<sup>22</sup> Tshering Tashi, "Yulsung: Bhutan's sensible tradition of quarantine," *Kuensel*, 21 March 2020, <https://kuenselonline.com/yulsung-bhutans-sensible-tradition-of-quarantine/>.

<sup>23</sup> "His Majesty the King's Coronation Speech," Thus Spoke the King – Speeches by His Majesty Jigme Khesar Namgyel Wangchuck, King of Bhutan, 7 November 2008, <http://no.dou.bt/2008/11/07/king-coronation-speech/>.

## B. The King's Role in Inspiring Unity in the Current Pandemic

Interdependence is a central Buddhist value and an integral part of Bhutanese life and culture. The Constitution confers a duty on every citizen to foster tolerance, mutual respect, and a spirit of brotherhood among the people of Bhutan.<sup>24</sup> During the pandemic, His Majesty the King appealed to the values of interdependence, mutual respect, compassion, and unity to rally the nation, stating that “as a small country with a small population, we can overcome any challenge we are faced with if the people and the government work together.”<sup>25</sup>

Following the king's announcement of the deferral of loan payments and waiver of interest for three months, many landlords announced their own waivers of rent for tenants, citing the king as their inspiration.<sup>26</sup> Military personnel, including the police, the National Volunteer Service (*De-Suung*, the “Guardians of Peace”), and trainees of the Vocational Training Institute volunteered to build temporary homes for thousands of people,<sup>27</sup> to guard the borders,<sup>28</sup> to serve people in quarantine facilities, and to promote awareness of and compliance with physical distancing in public places.<sup>29</sup> Farmers in the rural areas came forward to offer their farmed produce to the armed forces and *De-Suung* and to the government to support meals provision to quarantine facilities.<sup>30</sup> Many hoteliers offered their hotels and the service of their employees free of charge to run quarantine facilities.<sup>31</sup> Taxis and private transports offered free service to those in need.<sup>32</sup> Many businesses and individuals, irrespective of their financial status, overwhelmingly came forward and contributed to His Majesty's

<sup>24</sup> Art. 8(3).

<sup>25</sup> His Majesty the King, “National Address, March 22, 2020”; His Majesty the King, “National Address, 10 April 2020.”

<sup>26</sup> Some social media links to rent waivers: <https://www.facebook.com/lakiz.tsuearing/posts/2021303904680920>; <https://www.facebook.com/photo/?fbid=2718206154943711&set=a.599148080182873>; <https://www.facebook.com/photo/?fbid=1996860760457240&set=a.298162303660436>; <https://www.facebook.com/phuntshok.lhamo/posts/3122719521101263>.

<sup>27</sup> “HM returns from tour of Southern Dzongkhags,” *Kuensel*, 20 April 2020, <https://kuenselonline.com/hm-returns-from-tour-of-southern-dzongkhags>.

<sup>28</sup> “His Majesty the King addresses the nation,” *Kuensel*, 11 April 2020, <https://kuenselonline.com/his-majesty-the-king-addresses-the-nation>.

<sup>29</sup> Thinley Namgay, “Changes at CFM to ensure physical distancing,” 23 April 2020, <https://kuenselonline.com/changes-at-cfm-to-ensure-physical-distancing/>.

<sup>30</sup> Chewang Rinzin, “Covid-19 Bhutan: A Whole-of-Nation Project,” *Kuensel*, 11 April 2020, <https://kuenselonline.com/covid-19-bhutan-a-whole-of-nation-project/>.

Pema Tshewang, “Farmers Group contributing vegetables to help govt. feed people in quarantine,” *Bhutan Broadcasting Service*, 31 March 2020, <http://www.bbs.bt/news/?p=130430/>.

<sup>31</sup> Rajesh Rai, “22 hotels offer facilities as quarantine centres in P'ling,” *Kuensel*, 21 March 2020, <https://kuenselonline.com/22-hotels-offer-facilities-as-quarantine-centres-in-pling/>.

<sup>32</sup> Abhinaya Chhetri, “Taxis and buses offer help to govt despite the drop in business after COVID-19,” *The Bhutanese*, 14 March 2020, <https://thebhanese.bt/taxis-and-buses-offer-help-to-govt-despite-drop-in-business-after-Covid-19/>.

Kidu Fund and the government's Covid-19 Response Fund.<sup>33</sup> Teachers formed a volunteer organization (Volunteer Teachers of Bhutan) and supported the government in designing and teaching a prioritized curriculum to be used during the Covid-19 pandemic.<sup>34</sup> The national television company created a program, *Chik-Thuen* ("The Unity"), by bringing in talented Bhutanese such as actors and performers to entertain and create awareness among the public and those who were quarantined.<sup>35</sup>

Likewise, religious institutions and personnel came forward to support the king and the government in their efforts against the virus. On 20 March, His Holiness the Chief Abbot of the Central Monastic Body (the "Monk Body"), during the live telecast of the initiation of *Sangay Menlha* ("Medicine Buddha"), advised people that the king, who was deeply worried about the pandemic, had put his full effort in monitoring the situation and, therefore, that the people must unite in their efforts in support of the king and the government.<sup>36</sup> He further advised that they must listen to health experts and believe in science, must not gather in any form of crowd, and must maintain physical distance.<sup>37</sup> As in Sri Lanka,<sup>38</sup> the eminent members of the Monk Body, reiterating His Holiness's message, advised people to avoid visiting any temples or religious places, as it was not necessary to do so and Buddhism could be practised at home.<sup>39</sup> They also advised that non-adherence to health advice could accumulate demerits (negative karma accumulated for doing wrong) if someone spread the disease, risking the life of others.<sup>40</sup> They emphasized that effective practice of physical distancing would, in a way, equate to the practice of mindfulness in Buddhism.<sup>41</sup> The Monk Body, through television, also taught meditation techniques and the art of mindfulness, which can both be practised during quarantine and in isolation to cope with mental and psychological stress.<sup>42</sup> His Holiness emphasized that the stay-home advisory and quarantine were the best opportunities to practice Buddhist

<sup>33</sup> Staff Reporter, "COVID-19 Contributions continue," *Kuensel*, 4 April 2020, <https://kuenselonline.com/Covid-19-contributions-continue/>.

<sup>34</sup> Yangchen C. Rinzin, "Teachers come together to offer voluntary service," *Kuensel*, 10 March 2020, <https://kuenselonline.com/teachers-come-together-to-offer-voluntary-service/>.

<sup>35</sup> *Chik-Thuen*, Facebook, <https://www.facebook.com/BBS-Chik-Thuen-110067450675776>.

<sup>36</sup> "Heart Advice and Initiation of the Medicine Buddha for the Public by His Holiness the Je Khenpo," *Bhutan Broadcasting Service*, 14:30, 19 March 2020, <https://www.youtube.com/watch?v=mZzwxWuqLw>.

<sup>37</sup> "Heart Advice"; Tshering Palden, "Listen to Health Experts: His Holiness the Je Khenpo," *Kuensel*, 21 March 2020, <https://kuenselonline.com/listen-to-health-experts-his-holiness-the-je-khenpo/>.

<sup>38</sup> See Schonthal and Jayatilake, Chapter 18, this volume.

<sup>39</sup> Ministry of Health, "A message from the Venerable Tsugla Lopen emphasizing on the importance of physical distancing," Ministry of Health Bhutan, Facebook, 23 April 2020, <https://www.facebook.com/MoHBhutan/posts/3084730891588506>.

<sup>40</sup> "Heart Advice."

<sup>41</sup> Ministry of Health, "A message from the Venerable Tsugla Lopen."

<sup>42</sup> "Heart Advice."

teachings, as people were otherwise too busy.<sup>43</sup> As in Sri Lanka, Buddhist monks and nuns, headed by His Holiness, conducted rituals and chanted protective verses of Medicine Buddha and Parnashavari (Goddess of Natural Healing) to pacify the disease.<sup>44</sup> Holy water and sacred pills were distributed across Bhutan to protect the people from the virus.<sup>45</sup>

### C. The King's Role in Prioritizing Health over Politics and Economy

Health has always been a priority for the monarchs in Bhutan. That is why the Bhutanese people have enjoyed complete, free healthcare, even at the tertiary level, for over a century. During the Covid-19 pandemic, His Majesty emphasized that the lives of Bhutanese people, whether within or outside Bhutan, were the priority of the nation. The king's strong prioritization of health inspired the suspension of partisan politics.<sup>46</sup> The opposition party called for unity and solidarity of the people by firmly supporting the government and claiming it was not the time for politicking and playing blame games.<sup>47</sup> The opposition offered their gratitude to the king for personally guiding and overseeing the efforts of the government's response.<sup>48</sup> Therefore, the king's leadership may have inspired the opposition party to work in unity with the government, which was, fortuitously, led by medical professionals; the prime minister is a medical surgeon, the health minister is a public health expert, and the foreign minister is a paediatric surgeon. The government maintained that the king's leadership and sacrifices were their single biggest inspiration in their efforts against the virus.<sup>49</sup>

The government and the king worked together; for example the king, supported by the government, deferred the repayment of loans for three months with interest waivers.<sup>50</sup> Druk Gyalpo's Relief Kidu was announced under

<sup>43</sup> "Heart Advice."

<sup>44</sup> Samten Dolkar, "HH the Je Khenpo graces the distribution of Ngagchu and Jinlap," *Bhutan Broadcasting Service*, 13 May 2020, <http://www.bbs.bt/news/?p=132200>; "Mantra Recitation Count," National Council, 23 March 2020, [https://www.nationalcouncil.bt/en/media/view\\_news\\_detail/708](https://www.nationalcouncil.bt/en/media/view_news_detail/708).

<sup>45</sup> Samten Dolkar, "HH the Je Khenpo graces the distribution of Ngagchu and Jinlap."

<sup>46</sup> Druk Phuensum Tshogpa, "Press Release – Opposition Party: Call for Unity and Solidarity," *Facebook*, 7 March 2020, <https://www.facebook.com/photo?fbid=1275102389342447&set=pcb.1275102556009097>.

<sup>47</sup> Druk Phuensum Tshogpa, "Press Release – Opposition Party: Call for Unity and Solidarity."

<sup>48</sup> Druk Phuensum Tshogpa, "Press Release – Opposition Party: Call for Unity and Solidarity."

<sup>49</sup> Prime Minister's Office of Bhutan, *Facebook*, 14 April 2020, <https://www.facebook.com/PMOBhutan/posts/2838567602922591>; Prime Minister's Office of Bhutan, *Facebook*, 11 April 2020, <https://www.facebook.com/PMOBhutan/posts/2832041866908498>.

<sup>50</sup> Younten Tshedup, "NPL accounts eligible for interest waiver," *Kuensel*, 1 May 2020, <https://kuenselonline.com/npl-accounts-eligible-for-interest-waiver/>; Royal Monetary Authority of Bhutan, "Monetary Measures in Response to COVID-19," Royal Monetary Authority of Bhutan, 14 April 2020, <https://www.rma.org.bt/news/Phase%2020/Monetary%20Measures.pdf>.

the *Druk Gyalpo's Relief Fund Act 2012*, adopted under Article 14(12) of the Constitution,<sup>51</sup> to support those directly affected by the pandemic.<sup>52</sup> The king entrusted the government with the role of setting eligibility criteria and administering the relief. The government, on the advice of the king and supported by a team of specialists, established the National Resilience Fund, an economic contingency plan, to respond to fiscal and economic challenges.<sup>53</sup> The king supervised the construction of temporary homes in a Bhutanese border city for the benefit of thousands of Bhutanese who were residing across the border due to housing shortages within the country.<sup>54</sup> Even as India, on which Bhutan depends heavily, was locked down nationwide from 25 March 2020,<sup>55</sup> the government has been able to repatriate thousands of Bhutanese from around the world on the advice of the king and the recommendation of the Parliamentary Committee, while seeking to monitor the welfare of those who were unable to return.<sup>56</sup>

Private contributions of financial resources and other services suggested that many Bhutanese had prioritized humanitarian considerations over economic self-interest. Even hard-hit tourism and hospitality businesses, as mentioned earlier, came forward to support the government.<sup>57</sup> This suggests that both Bhutanese leaders and the people were resolute in ensuring the health and safety of the people, irrespective of the economic challenges. The ethos of servant leadership on the part of the king appears to have had a positive impact on the nation's response to the pandemic, in particular by fostering public trust and confidence in the government's leadership and support for its response to the pandemic.<sup>58</sup>

With the adoption of the Constitution, the king became the apolitical constitutional head of the state. The king retains the traditional royal prerogative of *kidu* and is charged with a duty to "protect and uphold" the Constitution in the

<sup>51</sup> Article 14(12) mandates the Parliament to establish a relief fund for Druk Gyalpo to use for urgent and unforeseen humanitarian relief.

<sup>52</sup> His Majesty King Jigme Khesar Namgyel Wangchuck, "Translation of His Majesty's Address to the Nation, 10th April 2020," *Facebook*, 10 April 2020, <https://www.facebook.com/notes/his-majesty-king-jigme-khesar-namgyel-wangchuck/translation-of-his-majestys-address-to-the-nation-10th-april-2020/10156847061406761>.

<sup>53</sup> His Majesty the King, "National Address, 10 April 2020."

<sup>54</sup> His Majesty King Jigme Khesar Namgyel Wangchuck, *Facebook*, 25 March 2020, <https://www.facebook.com/KingJigmeKhesar/posts/25-march-2020his-majesty-the-king-is-in-phuentsholing-to-inspect-the-plans-put-i/10157994568073260/>; Rajesh Rai, "Recipients of temporary shelters express gratitude to His Majesty The King," *Kuensel*, 16 May 2020, <https://kuenselonline.com/recipients-of-temporary-shelters-express-gratitude-to-his-majesty-the-king/>.

<sup>55</sup> See Tremblay and George, Chapter 12, this volume.

<sup>56</sup> His Majesty King Jigme Khesar Namgyel Wangchuck, "English translation of His Majesty's Address to the Nation on 22 March 2020," *Facebook*, 22 March 2020, <https://www.facebook.com/KingJigmeKhesar/posts/10157983285048260>.

<sup>57</sup> His Majesty the King, "National Address, April 10, 2020."

<sup>58</sup> Druk Phuensum Tshogpa, "Press Release – Opposition Party: Call for Unity and Solidarity," *Facebook*, 7 March 2020, <https://www.facebook.com/photo?fbid=1275102389342447&set=pcb.1275102556009097> (the opposition party offers gratitude to the king for personally guiding and boosting the morale of frontline agencies).

best interest and for the welfare of the people of Bhutan.<sup>59</sup> The king, as the source of the welfare of the people and the symbol of unity, may be equated with the concept of “cultural constitution” proposed by Nidhi Eoseewong<sup>60</sup> or as constitutional convention more generally. For some, the role of the king in this crisis might be seen as an extraordinary exercise of moral authority in a constitutional monarchy, but for the Bhutanese, he is an important family member who can be trusted during such crisis due to the strong personal relation between the king and his subjects. Though perhaps difficult for non-Bhutanese to fully understand, the relationship between the king and the people is captured in his coronation day speech:

Throughout my reign, I will never rule you as a King. I will protect you as a parent, care for you as a brother and serve you as a son. I shall give you everything and keep nothing; I shall live such as life as a good human being that you may find it worthy to serve as an example for your children; I have no personal goals other than to fulfil your hopes and aspirations. I shall always serve you, day and night, in the spirit of kindness, justice and equality.<sup>61</sup>

Even in the new constitutional era, then, the king continues to play a critical role by providing leadership, unifying the country, and, in the particular context of Covid-19, signalling the importance of prioritizing humanitarian considerations over private economic interest.

#### **4. Evaluation of the Response and Challenges Moving Forward**

Bhutan’s ability to prevent local transmission without a lockdown can be attributed in large part to the government’s strategic response. Making such local transmission its first priority, the government took vigorous steps, including a mandatory twenty-one-day quarantine period. A mandatory test was administered on the twenty-second day of quarantine, and the quarantine period was extended if the subject tested positive. Bhutanese arriving from countries with local transmission and those with symptoms were tested on arrival at the airport. Bhutan’s policy of free and universal healthcare contributed enormously to the containment of Covid-19. This encouraged every person to come forward for

<sup>59</sup> Art. 2(18).

<sup>60</sup> Nidhi Eoseewong, “The Thai Cultural Constitution,” *Kyoto Review of Southeast Asia*, <https://kyotoreview.org/issue-3-nations-and-stories/the-thai-cultural-constitution/>.

<sup>61</sup> “His Majesty the King’s Coronation Speech.”

any suspected case or for testing because no person needed to worry about medical expenses.

The current government also played a significant role in leading the nation in fighting the pandemic, proving itself effective, transparent, and efficient in the implementation of its response. Despite the limited resources, the government did extremely well in managing and using its limited resources effectively. While the government understood the negative economic impact, health and safety were placed above the economy. Through its economic stimulus plan, it was able to fund and support small businesses and start-ups. As part of this stimulus plan, Druk Gyalpo's Relief Kidu<sup>62</sup> was able to support those who lost their source of income due to the pandemic.<sup>63</sup> Beside the government, public servants, parliamentarians, private citizens, corporations, private organizations, NGOs, and international organizations in Bhutan also came forward to donate to this fund, with donors eventually numbering in the hundreds of thousands. Further, Bhutan's efforts to improve agriculture production to ensure food self-sufficiency<sup>64</sup> have taken a new step—the government launched schemes such as leasing government land for free to encourage people to take up commercial farming. Those people who lost their jobs due to the closure of tourism and night entertainment businesses took up commercial farming to substitute vegetable imports.<sup>65</sup>

Despite these encouraging developments, three challenges and concerns remain. First, while Bhutan technically sealed all the international borders to foreigners, it shares land borders with mountainous terrain and dense forests which are porous and impossible to monitor. Therefore, illegal border crossing remains a significant threat during a pandemic. Second, with many of the thousands of Bhutanese living in affected areas, such as the Middle East, the United States, Australia, and Europe, were still returning in May 2020, Bhutan would need to remain vigilant about the possibility of asymptomatic local transmission.

Third, there were also instances in which some agencies became too enthusiastic in dealing with the situation. For example, the Royal Bhutan Police<sup>66</sup> sent a letter requesting the Supreme Court to order all lower courts to cancel bail to

<sup>62</sup> "Prime Minister launches the Druk Gyalpo's Relief Kidu program," Office of the Prime Minister and Cabinet, 14 April 2020, <https://www.cabinet.gov.bt/prime-minister-launches-the-druk-gyalpos-relief-kidu-program/>.

<sup>63</sup> "Prime Minister launches the Druk Gyalpo's Relief Kidu program."

<sup>64</sup> Kinley Yonten, "Bhutan uses Covid-19 crisis to boost agriculture," *thethirdpole.net*, 30 April 2020, <https://www.thethirdpole.net/2020/04/30/bhutan-uses-Covid-19-crisis-to-boost-agriculture/>.

<sup>65</sup> Phub Dem, "Guides take up commercial farming as alternate source of income," *Kuensel*, 8 April 2020, <https://kuenselonline.com/guides-take-up-commercial-farming-as-alternate-source-of-income/>.

<sup>66</sup> The police serve under the Ministry of Home and Cultural Affairs.



all persons detained or arrested for suspicion of smuggling tobacco products or the illicit trafficking of drugs as a response to the risk of importing Covid-19. The officiating Chief Justice not only consented to cancel bail but also ordered all the lower courts to conduct speedy hearings of such cases and ordered them to enhance charges. One of the courts sentenced six men and a woman to eleven months in prison for not complying with the government's directives to close shops by 19:00 and avoiding gatherings for the breach of public order and tranquility.<sup>67</sup> While such punishment seems to be legal and constitutional when Section 448 of the *Penal Code of Bhutan* and Article 7(22) of the Constitution are read together, it may not be proportional. Section 448 defines a breach of public order and tranquility as the purposeful failure to abide by the orders of the government issued in the interest of the public safety, public order, and tranquility. Article 7(22) of the Constitution allows the state to impose reasonable restrictions by law on fundamental rights in the interest of the sovereignty, security, unity, and integrity of Bhutan, for instance, and in the interests of the peace, stability, and well-being of the nation. However, the police's request submitted to the Chief Justice to cancel bail for all cases in the lower courts, even presuming the best intentions, is inconsistent with the constitutional separation of powers.<sup>68</sup> As a matter of constitutional principle, the police, as part of the executive branch, cannot direct the judicial branch to decide cases in a particular way, contradicting the rules of criminal procedure. Further, the police taking the prosecutorial role from the Office of Attorney General or interfering with the independence of the lower courts could set harmful judicial precedent.<sup>69</sup> Therefore, Bhutan, as a relatively new constitutional democracy, needs to create a greater awareness of these legal principles, particularly in the context of a public health or other emergency.

## 5. Conclusion: The Way Forward

The values of unity and interdependence remain the greatest strength for Bhutan, which must continue to guide emergency responses in the future, but can also help in achieving other national goals. However, Bhutan faced several challenges during the pandemic. As mentioned earlier, though most of the people are united, there are outliers who took advantage of the situation. There are reported

<sup>67</sup> Kipchu, "Six men and a woman sentenced to 11 months in prison for Breach of Public Order and Tranquility," *Bhutan Broadcasting Service*, 12 May 2020, <https://www.facebook.com/bbsnews/posts/3515012015179943>.

<sup>68</sup> Article 1(13) of the Constitution states: "There shall be separation of the Executive, the Legislature and the Judiciary and no encroachment of each other's powers is permissible except to the extent provided for by this Constitution."

<sup>69</sup> Sections 2 and 5, CCPC 2001, provide for judicial independence and non-interference in judicial proceedings.

cases of drug smuggling and one case of a person who escaped from quarantine. As the king said, “such reckless action of a single person could risk the spread and completely undermine all national efforts.”<sup>70</sup> The government responded by increasing border patrols. However, in the long run, other solutions could be considered. Installing a smart wall (using drones, sensors, and artificial intelligence patrols) would give Bhutan more control over its borders in the context of another epidemic while also enabling the government to better control smuggling.

The pandemic has also highlighted some of Bhutan’s economic vulnerabilities. For example, pressing challenges arise from its dependence on the import of essential goods. Bhutan needs to attain at least food self-sufficiency, even if economic self-sufficiency is practically impossible. In response to the pandemic, many Bhutanese took up commercial farming, and hundreds of acres of fallow land in the urban areas were put to use by young and unemployed people.<sup>71</sup> Though India is under lockdown, the Indian government agreed to facilitate the export of essential goods to Bhutan without any restriction. Bhutan’s leadership must continue to nurture this long-standing relationship, while working toward food self-sufficiency.

Bhutan should also invest more in innovation and scientific research to help cope with similar situations in the future and to further increase Bhutan’s independence. Research in both traditional and modern medicines should be prioritized. Bhutan’s information technology, in particular its internet connectivity, reliability, and affordability, were a major challenge during the Covid-19 pandemic, as working and studying online were encouraged. Likewise, the need for investment in internal road connectivity also became clear during the pandemic, as some southern and eastern border towns were cut off from the rest of the country when India locked down.

However, the people’s trust and confidence in the leadership of His Majesty the King, their government, strong Buddhist values to help each other, and the conscience of unity and solidarity proved their foremost strength in containing this pandemic as a nation. The king’s personal involvement helped guide, motivate, and encourage compliance with and support for the government’s response. Therefore, while the Constitution contains provisions for emergency powers,<sup>72</sup> there was no requirement to use those powers formally. This is partly because unwritten political and social norms or cultural constitutional norms,<sup>73</sup> such as,

<sup>70</sup> His Majesty the King, “National Address, April 10, 2020.”

<sup>71</sup> Tshering Zam, “Agriculture, the most popular choice of alternative income for sectors affected by COVID-19,” *Kuensel*, 20 May 2020, [http://www.bbs.bt/news/?p=132476&fbclid=IwAR13Gj8maRyPjivgSlxtsdvhdJR-T1tUXv54MBjNq\\_1LTnQt2YMUXNkZQxU](http://www.bbs.bt/news/?p=132476&fbclid=IwAR13Gj8maRyPjivgSlxtsdvhdJR-T1tUXv54MBjNq_1LTnQt2YMUXNkZQxU).

<sup>72</sup> Art. 33.

<sup>73</sup> Victor V. Ramraj and Menaka Guruswamy, “Emergency Powers,” in Mark Tushnet et al. eds., *Routledge Handbook of Constitutional Law* (London and New York: Routledge, 2015), 85.

in Bhutan's case, the values of interdependence, unity, and solidarity, played important roles both in empowering and constraining the government in this time of emergency.

While partial restrictions imposed on some fundamental rights through ordinary legislation may be seen as unconstitutional, Article 7(22) of the Constitution allows the state to impose reasonable restrictions in circumstances discussed earlier. Therefore, the government's implementation of its Covid-19 response through ordinary legislation would not necessarily be unconstitutional. Further, the Parliamentary Committee chaired by a member of the opposition party provided some checks, through their review of preparedness and response plans, by offering recommendations to the government and submitting their reports to the king.<sup>74</sup> Media scrutiny at a weekly official press conference provided another source of public scrutiny. In other jurisdictions, the king's involvement during such emergency might be seen as a constitutional challenge. As we have seen, however, in Bhutan, the king is revered and expected to be a source of guidance and leadership. His role is not only culturally significant but also constitutionally recognized. Under Articles 2(16)(b) and 14(12), it is the prerogative of the king to grant *kidu* and use relief funds. But above all, the king is regarded as an apolitical institution, entrusted with the responsibility of protecting the Constitution and standing above partisan politics.

The Covid-19 pandemic has devastated many countries, yet Bhutan managed remarkably well. Despite its modest health infrastructure, Bhutan's preparation and its strategy to fight this disease, in the early months of the pandemic, were successful. Bhutan has always prioritized universal healthcare, and the Covid-19 pandemic set this priority even higher. Covid-19 has been a major test for Bhutan's new constitutional democratic monarchy. The initiatives of the government, with the wisdom of and guidance from the king, have been exemplary. While some countries have experienced poor leadership and public defiance in fighting this disease, Bhutan's steadfast leadership and the unity among the king, the government, and the people have proven decisive.

<sup>74</sup> Parliamentary Committee on Covid-19 Preparedness and Response meets today," National Assembly of Bhutan, 12 March 2020, [https://www.nab.gov.bt/en/media/view\\_news\\_detail/735](https://www.nab.gov.bt/en/media/view_news_detail/735).

# Cambodia: Public Health, Economic, and Political Dimensions

*Ratana Ly, \* Vandamet Hing, \*\* and Kimsan Soy\*\*\**

## 1. Introduction

The Royal Government of Cambodia (“the government”) has credited itself for the country’s peace, stability, and economic growth.<sup>1</sup> From 1998 to 2018, Cambodia’s economy grew at a rate of at least 7 per cent thanks to its strong garment and tourism sectors; this growth has lifted many above the poverty line.<sup>2</sup> The healthcare system, once broken due to war, was expanded and improved over this period.<sup>3</sup> Over 3 million Cambodians are now covered by social protection programs such as the Health Equity Fund for poor Cambodians, and the Social Security for workers,<sup>4</sup> which provide subsidized and free healthcare access through designated hospitals and health centres.<sup>5</sup>

In 2020, however, Cambodia’s economy and healthcare system faced serious challenges. In February, the European Commission decided to partially

\* PhD candidate, Faculty of Law, University of Victoria.

\*\* Researcher and Lecturer, Center for the Study of Humanitarian Law, Royal University of Law and Economics.

\*\*\* Director, Center for the Study of Humanitarian Law, Royal University of Law and Economics. The authors would like to thank Nicholas Picard for kindly proofreading this chapter.

<sup>1</sup> Reaksmey Hul, “Hun Sen Claims ‘Peace and Stability’ Without Opposition as He Blesses Cambodians at New Year Ceremony,” *Voice of America*, 10 April 2018, <https://www.voacambodia.com/a/hun-sen-claims-peace-and-stability-without-opposition-as-he-blesses-cambodians-at-new-year-ceremony/4340446.html>.

<sup>2</sup> The World Bank, “The World Bank in Cambodia: Overview,” 17 April 2020, <https://www.worldbank.org/en/country/cambodia/overview>.

<sup>3</sup> Augustine D. Asante et al., “Who Benefits from Healthcare Spending in Cambodia? Evidence for a Universal Health Coverage Policy,” *Health Policy and Planning* 34, supplement 1 (October 2019): i4–13, <https://doi.org/10.1093/heapol/czz011>.

<sup>4</sup> Royal Government of Cambodia, “Rectangular Strategy for Growth, Employment, Equity and Efficiency: Building the Foundation Toward Realizing the Cambodia Vision 2050 – Phase IV,” September 2018, at 24, <http://cnv.org.kh/wp-content/uploads/2012/10/Rectangular-Strategy-Phase-IV-of-the-Royal-Government-of-Cambodia-of-the-Sixth-Legislature-of-the-National-Assembly-2018-2023.pdf>.

<sup>5</sup> Mary W. Kaba et al., “IDPoor: A Poverty Identification Programme That Enables Collaboration across Sectors for Maternal and Child Health in Cambodia,” *BMJ* 363 (December 2018): k4698, <https://doi.org/10.1136/bmj.k4698>.

withdraw Cambodia's tariff preferences granted under the Everything But Arms (EBA) trade scheme—which would affect selected garment, footwear, travel goods, and sugar products—because of the country's bleak human rights record.<sup>6</sup> This withdrawal was to take effect on 12 August 2020 unless the European Parliament and the Council objected.<sup>7</sup> Strengthening political and economic ties to China added complexity to an already delicate situation. Covid-19 casts further gloom. A global recession triggered by the Covid-19 pandemic had a spillover effect on countries such as Cambodia with a low average income, high external debt, and limited fiscal space to control its effects.<sup>8</sup> Cambodia's economy was projected by some to grow by 2.3 per cent.<sup>9</sup> Other scenarios predict growth of 1 per cent<sup>10</sup> or even negative 1.6 per cent.<sup>11</sup> The healthcare system was also under stress. Three million Cambodians cannot access safe water; another 6 million have no improved sanitation.<sup>12</sup> Mistrust in below-standard<sup>13</sup> public healthcare, treatment, and services endures.<sup>14</sup> Despite progress in reducing illnesses and deaths resulting from infectious diseases,<sup>15</sup> mass infections could overwhelm the healthcare system, which would disproportionately affect the poor.<sup>16</sup> The World Health Organization (WHO) congratulated Cambodia for having “effectively” managed the first wave of this virus,<sup>17</sup> although critics attributed this success to luck due to late and “spotty enforcement of lockdowns.”<sup>18</sup> Cambodia

<sup>6</sup> European Commission, “Commission Decides to Partially Withdraw Cambodia's Preferential Access to the EU Market,” European Commission – Press Release, 12 February 2020, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_229](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_229).

<sup>7</sup> European Commission, “Commission Decides.”

<sup>8</sup> The World Bank, “World Bank East Asia and Pacific Economic Update, April 2020: East Asia and Pacific in the Time of Covid-19,” April 2020, at 15, <https://openknowledge.worldbank.org/handle/10986/33477>.

<sup>9</sup> Asian Development Bank, “Asian Development Outlook 2020: What Drives Innovation in Asia? Special Topic: The Impact of the Coronavirus Outbreak – An Update,” April 2020, at 20, <https://www.adb.org/sites/default/files/publication/575626/ado2020.pdf>.

<sup>10</sup> The World Bank, “Economic Update,” at 19.

<sup>11</sup> “Cambodia: At a Glance,” International Monetary Fund, accessed 2 June 2020, <https://www.imf.org/en/Countries/KHM>.

<sup>12</sup> “Cambodia's Water and Sanitation Crisis,” *Water.org*, accessed 17 May 2020, <https://water.org/our-impact/where-we-work/cambodia/>.

<sup>13</sup> Charlotte Gryseels et al., “When ‘Substandard’ Is the Standard, Who Decides What Is Appropriate? Exploring Healthcare Provision in Cambodia,” *Critical Public Health* 29, no. 4 (June 2019), at 462–470, <https://doi.org/10.1080/09581596.2019.1591614>.

<sup>14</sup> Royal Government of Cambodia, “Rectangular Strategy,” at 24.

<sup>15</sup> Royal Government of Cambodia, “Rectangular Strategy,” at 24.

<sup>16</sup> David Hutt, “The Trouble with Cambodia's Health System,” *The Diplomat*, 19 July 2019, <https://thediplomat.com/2019/07/the-trouble-with-cambodias-health-system/>.

<sup>17</sup> The World Health Organization, “WHO Works Closely with the Royal Government of Cambodia in the Fight against Covid-19,” 12 May 2020, <https://www.who.int/cambodia/news/detail/12-05-2020-who-works-closely-with-the-royal-government-of-cambodia-in-the-fight-against-covid-19>.

<sup>18</sup> Hannah Beech et al., “The Covid-19 Riddle: Why Does the Virus Wallop Some Places and Spare Others?,” *The New York Times*, 3 May 2020, <https://www.nytimes.com/2020/05/03/world/asia/coronavirus-spread-where-why.html>.

even took a risky decision, by allowing a stranded ship, the *Westerdam*, turned away by several countries, to dock in Cambodia. This so-called humanitarian gesture won praise from the WHO director-general<sup>19</sup> and the president of the United States.<sup>20</sup>

The Covid-19 pandemic raises the question of how a country susceptible to political manipulation and external economic shocks can balance the population's health with the mantra of peace, stability, and growth. This chapter notes that while the government put much effort into protecting the health of the population and curbing the spread of Covid-19, it was primarily inclined toward maintaining the economy and enforcing peace and stability; by adhering to its health and human rights obligations under international conventions, Cambodia stood to improve its relations with Western countries, boosting growth and, in turn, fostering peace and stability. We first discuss the emergence of Covid-19 in Cambodia, followed by the legal and regulatory responses and the social dimensions of Cambodia's Covid-19 response, before critically evaluating these responses.

## 2. The Emergence of Covid-19 in Cambodia

On 27 January 2020, Cambodia's Ministry of Health (MoH) confirmed its first case of Covid-19; by 15 May, the number had increased to 122 confirmed cases.<sup>21</sup> The MoH claimed to have a testing capacity of 600 per day and reported that, as of 15 May, 14,684 Covid-19 testing kits had been used, with a testing rate of 903 per 1 million since January 2020.<sup>22</sup> With only a limited number of testing kits, mostly imported from China, the MoH limited testing mainly to those with a travel history to the epicentre of the disease.<sup>23</sup> Contact tracing was used, and people who developed flulike symptoms without travel history were usually advised to stay home and self-quarantine. Approximately 50 per cent of confirmed cases were

<sup>19</sup> Rethy Chhem and Sirika Chhem, "Cambodia Global Health Diplomacy: The 'Westerdam' Cruise Ship Saga," *Khmer Times*, 26 March 2020, <https://www.khmertimeskh.com/705764/cambodia-global-health-diplomacy-the-westerdam-cruise-ship-saga/>.

<sup>20</sup> Reuters, "Trump Thanks Cambodia over Ship in Rare Message to China Ally," *The Straits Times*, 15 February 2020, <https://www.straitstimes.com/asia/se-asia/trump-thanks-cambodia-over-ship-in-rare-message-to-china-ally>.

<sup>21</sup> The Ministry of Health, "Press Release on the Full Recovery of the 122nd Covid-19 Patient and the Absence of New Case," *Facebook*, 16 May 2020, <https://www.facebook.com/MinistryofHealthofCambodia/photos/pcb.3019232314782521/3019232014782551/?type=3&theater>.

<sup>22</sup> The Ministry of Health, "Full Recovery."

<sup>23</sup> Meta Kong and Ananth Baliga, "Takeo Health Centers Focus on Travel Histories; Disregarding 'Normal Flu' Cases," *Voice of America*, 24 April 2020, <https://www.voacambodia.com/a/takeo-health-centers-focus-on-travel-histories-disregarding-normal-flu-cases/5389811.html>.

among those above fifty years old—the oldest patient being around eighty years old. The remainder were between twenty and fifty years old, with the exception of one twelve-year-old patient (and one four-month-old baby).<sup>24</sup> Sixty-nine per cent of the total cases were male;<sup>25</sup> 58 per cent were foreign nationals,<sup>26</sup> 32 per cent of whom were French tourists<sup>27</sup> in a tour group visiting multiple cities in Cambodia—the largest cluster of infections.<sup>28</sup> Another large cluster consisted of Cambodians returning from a religious congregation in Malaysia in March.<sup>29</sup> As a result, since March, the government has placed bans and restrictions on many activities and businesses. The last confirmed case was announced on 12 April, while the last patient of the 122 cases was declared fully recovered by 15 May.<sup>30</sup>

The government developed and implemented its National Master Plan for Covid-19 with support from international institutions, including the WHO<sup>31</sup> and development partners, particularly China,<sup>32</sup> the United States,<sup>33</sup> and Japan.<sup>34</sup> Supplementing its Master Plan, the government and its partners are strengthening the core public health system, planning around public health and social measures, building efforts to mitigate the socio-economic effects, protecting vulnerable populations, engaging communities, and strengthening local government leadership and coordination.<sup>35</sup>

<sup>24</sup> These statistics are calculated and manually gathered based on the press releases on Covid-19 by the Ministry of Health of Cambodia from 27 January to 15 May 2020, which describe the ages of infected individuals. The press releases of the Ministry of Health are only available in Khmer and are found on its Facebook page at <https://www.facebook.com/MinistryofHealthofCambodia/>.

<sup>25</sup> The Ministry of Health, “Full Recovery.”

<sup>26</sup> The Ministry of Health, “Full Recovery.”

<sup>27</sup> The Ministry of Health, “Full Recovery.”

<sup>28</sup> “Covid-19 Cluster Infections Spooks Health Officials in Cambodia,” *Khmer Times*, 4 April 2020, <https://www.khmertimeskh.com/709557/covid-19-cluster-infections-spooks-health-officials-in-cambodia/>.

<sup>29</sup> “Cluster Infections of Covid-19 in Cambodia on the Rise, Cases at 47 as of Last Night,” *Khmer Times*, 20 March 2020, <https://www.khmertimeskh.com/703749/cluster-infections-of-covid-19-in-cambodia-on-the-rise-cases-at-47-as-of-last-night/>.

<sup>30</sup> The Ministry of Health, “Full Recovery.”

<sup>31</sup> The World Health Organization, “Fight Covid-19”; Huaxia, “World Bank Approves 20 mln USD for Cambodia’s Covid-19 Response,” *Xinhua*, 3 April 2020, [http://www.xinhuanet.com/english/2020-04/03/c\\_138943579.htm](http://www.xinhuanet.com/english/2020-04/03/c_138943579.htm); UNICEF, “UNICEF Cambodia Covid-19 Response Situation Report,” April 2020, <https://www.unicef.org/cambodia/media/2881/file/UNICEF%20Cambodia%20COVID-19%20Situation%20Report.pdf>.

<sup>32</sup> Huaxia, “Cambodia-China Joint Covid-19 Fight an Outstanding Model of Cooperation: Cambodia’s Ruling Party Spokesman,” *Xinhua*, 19 April 2020, [http://www.xinhuanet.com/english/2020-04/19/c\\_138990237.htm](http://www.xinhuanet.com/english/2020-04/19/c_138990237.htm).

<sup>33</sup> United States Embassy in Cambodia, “United States Provides Additional \$1.5 Million for Cambodia’s Response to Covid-19,” 27 April 2020, <https://kh.usembassy.gov/united-states-provides-additional-1-5-million-for-cambodias-response-to-covid-19/>.

<sup>34</sup> Phat Dane, “Japan Donates Medical Supplies to Cambodia,” *Cambodianess*, 28 January 2020, <https://cambodianess.com/article/japan-donates-medical-supplies-to-cambodia>.

<sup>35</sup> The World Health Organization, “Fight Covid-19.”

### 3. Legal and Regulatory Responses

The Constitution of Cambodia explicitly guarantees health for every citizen.<sup>36</sup> Although many laws in Cambodia refer to health, none of them specifically address infectious diseases like Covid-19. The MoH has its own strategic plan to ensure high-quality, effective, and equitable health services between 2016 and 2020.<sup>37</sup> However, the unprecedented Covid-19 pandemic triggered ad hoc legal responses. Passing a new law in Cambodia requires stringent processes, including passing through the parliament, the senate, and the head of state,<sup>38</sup> so policies, regulations, and strategies for fighting Covid-19 and resuscitating the economy came primarily from the executive, through the prime minister, ministers, and senior governmental officials.<sup>39</sup> The prime minister has the power to manage and command “all activities” in every field of the government.<sup>40</sup> In extraordinary circumstances, he can issue orders for “expenses out of the national budget plan specified by the National Assembly” to address urgent and necessary matters prior to reporting to the National Assembly.<sup>41</sup>

On 18 March, the government issued a decision to establish the national committee and sub-national committees on Covid-19. The committees would create, lead, facilitate, and implement policies and strategies on the impacts of the pandemic on health, politics, economy, and society.<sup>42</sup> The working groups for the national committee plan and oversee all tasks related to the response to Covid-19 cases, such as providing the updated information on cases, training on protection against Covid-19, and tackling misinformation and fake news, among others.<sup>43</sup> The government also suspended many businesses and activities, such as karaoke, cinemas,<sup>44</sup> public concerts,<sup>45</sup>

<sup>36</sup> *The Constitution of the Kingdom of Cambodia, 1993*, art. 72.

According to Article 72, “The health of the people shall be guaranteed. The State shall give full consideration to disease prevention and medical cares. Poor people shall receive free medical consultations in public hospitals, infirmaries and maternities.”

<sup>37</sup> Department of Planning & Health Information, “Health Strategic Plan 2016–2020: ‘Quality, Effective and Equitable Health Services’” (Ministry of Health, May 2016), [http://hismohcambodia.org/public/fileupload/carousel/HSP3-\(2016-2020\).pdf](http://hismohcambodia.org/public/fileupload/carousel/HSP3-(2016-2020).pdf).

<sup>38</sup> *The Constitution of the Kingdom of Cambodia*, art. 93 new.

<sup>39</sup> *The Constitution of the Kingdom of Cambodia*, art. 118 new.

<sup>40</sup> *The Law on the Organization and Functioning of the Council of Minister*, 1994, art. 9.

<sup>41</sup> *The Law on the Organization and Functioning of the Council of Minister*, art. 16.

<sup>42</sup> Royal Government of Cambodia, “Decision No. 029 on Establishment of the National Committee to Fight COVID-19,” 18 March 2020, clauses 2 and 4, <https://www.moeys.gov.kh/index.php/kh/laws-and-legislations/decision/3572.html#.Xtg1UudlDIV>.

<sup>43</sup> Royal Government of Cambodia, “Decision No. 029,” clause 5.

<sup>44</sup> Ministry of Health, “The Closure of KTV and Cinema Nationwide during the Spreading of Covid-19 Situation,” *Facebook*, 17 March 2020, <https://www.facebook.com/MinistryofHealthofCambodia/photos/a.930887636950343/2870596222979465/?type=3&theater>.

<sup>45</sup> Ministry of Health, “Announcement on Banning Public Concerts,” *Facebook*, 17 March 2020, <https://www.facebook.com/MinistryofHealthofCambodia/photos/a.930887636950343/2871266072912480/?type=3&theater>.



casinos,<sup>46</sup> gyms,<sup>47</sup> educational institutions,<sup>48</sup> and the Khmer New Year holiday,<sup>49</sup> and restricted travel between the capital and the provinces during the New Year.<sup>50</sup> Stricter health and financial screening measures were imposed on prospective foreign travellers.<sup>51</sup> Foreign visitors from France, Germany, Iran, Italy, Spain, and the United States were temporarily banned altogether.<sup>52</sup> Conspicuously, some big events such as a major military exercise with China<sup>53</sup> and the river festival proceeded,<sup>54</sup> creating uncertainty as to what the government deemed essential for Cambodia.

During the pandemic, the government has actively supported the economy by, for example, helping to lower gasoline prices,<sup>55</sup> suspending paddy rice and white rice exports to ensure domestic supply,<sup>56</sup> regulating prices<sup>57</sup> and flow of necessary goods,<sup>58</sup> and preventing the distribution of fake medical

<sup>46</sup> “Cambodia PM Orders Casinos Shut Down as Coronavirus Cases Climb,” *Reuters*, 30 March 2020, <https://www.reuters.com/article/us-health-coronavirus-cambodia-idUSKBN21H0S4>.

<sup>47</sup> Ministry of Education, Youth and Sport “Request for the Temporary Closure of Gyms,” 2 April 2020, [https://opendevdevelopmentcambodia.net/wp-content/blogs.dir/2/files\\_mf/158589932921628435\\_3500306709995918\\_6293880775326564352\\_o.jpg](https://opendevdevelopmentcambodia.net/wp-content/blogs.dir/2/files_mf/158589932921628435_3500306709995918_6293880775326564352_o.jpg).

<sup>48</sup> Khemara Sok and Narin Sun, “Cambodia Announces Nationwide School Closures as Covid Response Ramps Up,” *Voice of America*, 16 March 2020, <https://www.voacambodia.com/a/cambodia-announces-nationwide-school-closures-covid-response-ramps-up-/5330402.html>.

<sup>49</sup> Ministry of Labour and Vocational Training, “Announcement on the Postponement of Khmer New Year Holiday 2020 (No. 012/20),” *Facebook*, 7 April 2020, <https://www.facebook.com/mlvt.gov.kh/photos/a.236291999878965/1502380839936735/?type=3&theater>.

<sup>50</sup> Narin Sun, “Cambodian Government Lifts Nationwide Travel Ban Early,” *Voice of America*, 16 April 2020, <https://www.voacambodia.com/a/cambodian-government-lifts-nationwide-travel-ban-early-/5374303.html>.

<sup>51</sup> Ministry of Foreign Affairs and International Cooperation, “Travel Restrictions Issued by the Royal Government of Cambodia in Relation to the Novel Coronavirus (Covid-19),” 27 March 2020, <https://www.mfaic.gov.kh/fr/site/detail/41731>.

<sup>52</sup> Ministry of Foreign Affairs and International Cooperation, “Letter No. 3176 on the Extension of the Travel Resistance and the Temporary Suspension of Travel into Cambodia for Foreigners,” *Facebook*, 16 April 2020, <https://www.facebook.com/mfaic.gov.kh/photos/pcb.1867278963402682/1867278733402705/?type=3&theater>.

<sup>53</sup> Prashanth Parameswaran, “China and Cambodia Hold Their Biggest Military Exercise Yet,” *The Diplomat*, 21 March 2020, <https://thediplomat.com/2019/03/china-and-cambodia-hold-their-biggest-military-exercise-yet/>.

<sup>54</sup> “Cambodian PM Opens 6th River Festival in Battambang Province,” *Xinhua*, 14 March 2020, [http://www.china.org.cn/world/Off\\_the\\_Wire/2020-03/14/content\\_75814963.htm](http://www.china.org.cn/world/Off_the_Wire/2020-03/14/content_75814963.htm).

<sup>55</sup> Ministry of Commerce, “Notification No. 1596 on Fuel Retail Price at Fuel Station,” *Facebook*, 4 May 2020, <https://www.facebook.com/moc.gov.kh/photos/pcb.3255384311141091/3255384134474442/?type=3&theater>.

<sup>56</sup> Ministry of Commerce, “Notification on the Royal Government’s Decision to Temporarily Suspend the Export of White Rice and Paddy Rice,” *Facebook*, 30 March 2020, <https://www.facebook.com/moc.gov.kh/photos/a.689518274394387/3167961949883328/?type=3&theater>.

<sup>57</sup> Ministry of Commerce, “Request on Maintaining Product Market Price in Kingdom of Cambodia,” *Facebook*, 27 March 2020, <https://www.facebook.com/moc.gov.kh/photos/pcb.3162193520460171/3162193370460186/?type=3&theater>.

<sup>58</sup> General Department for Customs and Excise, “Letter No. 0857/20 on Urgent Measures to Control Selected Goods,” 30 March 2020, <https://www.eurocham-cambodia.org/post/712/30-MARCH-03-April-KEEPING-YOU-INFORMED-RECENT-ANNOUNCEMENTS-BY-THE-ROYAL-GOVERNMENT>.

products.<sup>59</sup> Foreigners stranded in Cambodia received an automatic extension of tourist visas;<sup>60</sup> those who were late in extending work permits due to Covid-19 were exempted from paying a fine.<sup>61</sup> The Ministry of Economy and Finance established a working group to respond to the economic impacts of Covid-19 and the partial withdrawal of the EBA tariff preferences.<sup>62</sup> Suspended workers in the registered garment and tourism industries received USD 40 per month from the government for at least two months, in addition to a contribution by their employers, provided they met specified criteria.<sup>63</sup> These workers remained eligible for the National Social Security Fund (NSSF) even when contributions to the NSSF by enterprises, factories, and establishments was temporarily postponed.<sup>64</sup> The government also provided tax relief to the aviation and tourism sectors.<sup>65</sup> The Small- and Medium-Sized Enterprises Co-financing scheme worth USD 100 million, among other stimulus packages, provided low-interest loans to prioritized industries, such as manufacturing and handicraft.<sup>66</sup> The National Bank of Cambodia issued a circular on loan restructuring to “maintain financial

<sup>59</sup> Ministry of Health, “Notification on Sale Prohibition of Pharmaceuticals, Medical Equipment and Disinfectant Substances without Registration or Notification Number,” 31 March 2020, <https://www.eurocham-cambodia.org/post/712/30-MARCH-03-April-KEEPING-YOU-INFORMED-RECENT-ANNOUNCEMENTS-BY-THE-ROYAL-GOVERNMENT>.

<sup>60</sup> Ministry of Foreign Affairs and International Cooperation, “Letter No. 761 on the Automatically Extend Tourist Visas for Arrivals After 1 January 2020,” *Facebook*, 3 April 2020, <https://www.facebook.com/mfaic.gov.kh/photos/a.440578862739373/1854133778050534/?type=3&theater>.

<sup>61</sup> Ministry of Labour and Vocational Training, “Notification No. 044/20 on Foreign Work Permit Extensions,” 8 April 2020, <https://www.eurocham-cambodia.org/post/715/07-10-APRIL-KEEPING-YOU-INFORMED-RECENT-ANNOUNCEMENTS-BY-THE-ROYAL-GOVERNMENT>.

<sup>62</sup> Ministry of Economy and Finance, “Decision No. 028 on Establishment of a Multidisciplinary Working Group to Plan Monetary and Banking Measures to Manage the Impact of Covid-19 and the Withdrawal of ‘Everything But Arms (EBA),’” 3 April 2020, <https://www.eurocham-cambodia.org/post/714/03-07-APRIL-KEEPING-YOU-INFORMED-RECENT-ANNOUNCEMENTS-BY-THE-ROYAL-GOVERNMENT>.

<sup>63</sup> Royal Government of Cambodia, “Instruction on Further Measures to Help the Private Sector and Workers-Employees Severely Affected by Covid-19 Pandemic,” 7 April 2020, <https://www.eurocham-cambodia.org/post/715/07-10-APRIL-KEEPING-YOU-INFORMED-RECENT-ANNOUNCEMENTS-BY-THE-ROYAL-GOVERNMENT>.

<sup>64</sup> Ministry of Labour and Vocational Training, “Instruction No. 045/20 on Employment Contract Suspension and Suspension of NSSF Contribution Payment for Factories, Enterprises, Establishments in the Garment and Tourism Sectors Severely Affected by Covid-19,” 17 April 2020, <https://www.eurocham-cambodia.org/post/716/10-17-APRIL-KEEPING-YOU-INFORMED-RECENT-ANNOUNCEMENTS-BY-THE-ROYAL-GOVERNMENT>.

<sup>65</sup> General Department of Taxation, “Instruction No. 9648 on the Implementation of the Royal Government’s Decision for Additional Tax Relief Measures to Support the Aviation and Tourism Industries Severely Impacted by the Spread of Covid-19,” 9 April 2020, <https://www.eurocham-cambodia.org/post/715/07-10-APRIL-KEEPING-YOU-INFORMED-RECENT-ANNOUNCEMENTS-BY-THE-ROYAL-GOVERNMENT>.

<sup>66</sup> Ministry of Economy and Finance, “Announcement on the Launch of the Small-Medium Enterprises Co-Financing Scheme,” *Facebook*, 3 April 2020, <https://www.facebook.com/ministry.economy.finance/photos/pcb.2837653306330789/2837650389664414/?type=3&theater>.

stability, support economic activities and mitigate the burden of borrowers.”<sup>67</sup> These regulations have contributed to governing health, the economy, and societal stability. In addition to these regulations, Cambodia also passed the Law on the Management of the Nation in State of Emergency (State of Emergency Law), premised on the emergency powers clause in Article 22 of the Constitution,<sup>68</sup> which we will consider in more detail later in the chapter.

#### 4. Social Dimensions of Cambodia’s Covid-19 Response

Members of the Cambodian public took early actions to curb the threat of Covid-19. In January 2020, many people were already wearing face masks and enhancing their sanitation,<sup>69</sup> while the government took a more lenient approach, asking the public not to panic.<sup>70</sup> Also, civil society organizations argued that Covid-19 aggravated gender-based violence as a result of the economic insecurity caused to women by the increase in their unpaid care work and their disproportionate role as front-line health providers, and increased domestic violence.<sup>71</sup> They thus pleaded with the government, in April, to consider gender-based violence, discrimination against women and girls, economic empowerment for women, and community safety and security as part of the Covid-19 response.<sup>72</sup>

The government, through local authorities, police forces, military police, and agencies, also implemented a variety of measures to contain Covid-19 and to ensure social stability mainly since March as cases increased in Cambodia.<sup>73</sup> It advised some Cambodians abroad to stay put to prevent the importation of

<sup>67</sup> National Bank of Cambodia, “Circular on Loan Restructuring during Covid-19 Epidemic,” 27 March 2020, at 1, <https://www.eurocham-cambodia.org/post/710/-27-30-March-Keeping-You-Informed-Recent-Announcements-by-the-Royal-Government>.

<sup>68</sup> *The Constitution of the Kingdom of Cambodia*.

<sup>69</sup> Bunthoeun Chhut, “Shortage of Masks, Alcohol Gel Amid Fears of Novel Coronavirus Outbreak,” *Khmer Times*, 29 January 2020, <https://www.khmertimeskh.com/50684882/shortage-of-masks-alcohol-gel-amid-fears-of-novel-coronavirus-outbreak/>.

<sup>70</sup> Sopheng Cheang, “Cambodian Leader Blasts Online Misinformation about Virus,” *Associated Press*, 30 January 2020, <https://apnews.com/7d69c344edebba32e854993936a2f95>.

<sup>71</sup> Gender and Development for Cambodia et al., “Cambodia CSO Joint Position Paper: Prioritize the Needs of Those at Increased Risk of Gender-Based Violence in Responding to the Covid-19 Situation,” 2 April 2020, [https://cchrcambodia.org/index\\_old.php?title=Cambodia-CSO-Joint-Position-Paper-Prioritize-the-needs-of-those-at-increased-risk-of-gender-based-violence-in-responding-to-the-COVID-19-situation&url=media/media.php&p=press\\_detail.php&prid=752&id=5](https://cchrcambodia.org/index_old.php?title=Cambodia-CSO-Joint-Position-Paper-Prioritize-the-needs-of-those-at-increased-risk-of-gender-based-violence-in-responding-to-the-COVID-19-situation&url=media/media.php&p=press_detail.php&prid=752&id=5).

<sup>72</sup> Gender and Development for Cambodia et al., “Proposition Paper.”

<sup>73</sup> Ministry of Interior, “Instruction No. 1123 to the Capital and Provincial Governors to Strictly Enforce the Travel Restriction Directive Issued by the Royal Government,” 10 April 2020, <https://www.eurocham-cambodia.org/post/715/07-10-APRIL-KEEPING-YOU-INFORMED-RECENT-ANNOUNCEMENTS-BY-THE-ROYAL-GOVERNMENT>.

Covid-19.<sup>74</sup> However, despite that advisory, thousands of Cambodian migrant workers returned *en masse* from Thailand in March alone due to difficult economic circumstances.<sup>75</sup> Monitoring, testing, tracing cases, and enforcing a fourteen-day quarantine for all returnees was an insurmountable challenge for the authorities and medical staff.<sup>76</sup> Further exacerbating the situation, private hospitals were prohibited from testing for or treating Covid-19 without special permission from the MoH in order to prevent the spread.<sup>77</sup>

Politics entered into play during enforcement, with the less-privileged and the outspoken being singled out. The government instructed all workers to go to work as normal on Khmer New Year, but the Ministry of Labour specifically required factory and enterprise workers (who tend to be lower skilled) who were absent from work to travel to their hometowns during this postponed holiday, to undergo an unpaid fourteen-day quarantine upon returning.<sup>78</sup> Those who did not abide by the quarantine rule risked being dismissed.<sup>79</sup> Factory workers, however, were already at risk, as they worked and stayed in close quarters, preventing physical distancing.<sup>80</sup> The authorities also reprimanded people perceived to be overreacting to Covid-19.<sup>81</sup> The MoH accused a news media outlet of misquoting its health minister; some politicians were accused by the MoH as being opportunistic, using those misquotes for political propaganda and defamation.<sup>82</sup> Legal actions were taken against journalists who were accused of sharing fake news.<sup>83</sup> In early May, local authorities confronted several community representatives

<sup>74</sup> “Citing Financial Hardship, Cambodians in Malaysia Plead to Return Home,” *BenarNews*, 9 April 2020, <https://www.benarnews.org/english/news/malaysian/migrants-stuck-04092020133237.html>.

<sup>75</sup> Myanmar also experienced a similar migration at this time: see Ostwald and Tun, Chapter 23, this volume.

<sup>76</sup> Malis Tum, “Government Struggles to Monitor Returning Migrant Workers for Coronavirus,” *Voice of America*, 25 March 2020, <https://www.voacambodia.com/a/5344353.html>.

<sup>77</sup> Ministry of Health, “Notification to Owners of Private Hospitals,” *Facebook*, 30 March 2020, <https://www.facebook.com/MinistryofHealthofCambodia/photos/a.930887636950343/2900470949991992/?type=3&theater>.

<sup>78</sup> Niem Chheng, “Over 15,000 Workers to be Kept in Quarantine,” *Phnom Penh Post*, 16 April 2020, <https://www.phnompenhpost.com/national/over-15000-workers-be-kept-quarantine>.

<sup>79</sup> Ministry of Labour and Vocational Training, “Instruction No. 046/20 on Quarantine Measures for Workers/Employees at Factories, Enterprises and Establishment Taking Leave During Khmer New Year and Returning to Work,” 17 April 2020, [https://ibccambodia.com/wp-content/uploads/2020/05/Instruction-No.-046-on-Quarantine-Masures-for-Employees-Workers-at-Factories-Enterprises-and-Establishments\\_EN.pdf](https://ibccambodia.com/wp-content/uploads/2020/05/Instruction-No.-046-on-Quarantine-Masures-for-Employees-Workers-at-Factories-Enterprises-and-Establishments_EN.pdf).

<sup>80</sup> Matt Blomberg, “‘Please, We Are Not Animals’: Virus Fears Weigh on Cambodia’s Garment Workers,” *Thomson Reuters Foundation*, 10 April 2020, <https://news.trust.org/item/20200410111527-wbgsi/>.

<sup>81</sup> Sopheng Cheang, “Leader Blasts.”

<sup>82</sup> “Ministry of Health Dismissed the Misquoting the Words of the Minister Causing Confusion Regarding the Transmission of the Corona Virus,” *Fresh News*, 31 January 2020, <http://m.freshnewsasia.com/index.php/en/localnews/147129-2020-01-31>.

<sup>83</sup> Chhengpor Aun and Mony Say, “Amid Backsliding on Press Freedoms, Phnom Penh Calls for ‘Professional’ Reporting,” *Voice of America*, 2 May 2020, <https://www.voanews.com/press-freedom/amid-backsliding-press-freedoms-phnom-penh-calls-professional-reporting>.

who were submitting a petition asking the government for health and economic support for vulnerable communities.<sup>84</sup>

Covid-19 affects people from all walks of life in Cambodia but had a differential impact according to their particular social and economic situations and livelihoods. In these circumstances, consultations, public engagement, and participation, including with people from diverse social, political, economic, and cultural groups, would provide concrete evidence to better enable the government to tailor its policies and responses to support the population.

## 5. Evaluation of the Responses and Challenges Moving Forward

By the end of May 2020, the future of Covid-19 in Cambodia was still uncertain, but its grim impact on the economy would clearly linger, especially due to Cambodia's economic reliance on other countries. Economic shocks can put the "near-poor," which make up almost a quarter of the Cambodian population, back into poverty.<sup>85</sup> These shocks could also trigger societal instability, prompting the government to take aggressive measures to keep the economy and society intact.

### A. Impacts of the Economic Shock

As of April 2020, 130 garment, footwear, and travel goods factories have suspended operations, with exports declining by more than 50 per cent in the second quarter of 2020 compared to the previous year due to the decline in purchase orders mainly from the European countries and the United States.<sup>86</sup> In the garment and tourism sectors, at least 100,000 workers were laid off or suspended by April.<sup>87</sup> More than 90,000 Cambodian migrant workers who returned home after losing jobs in the host states might struggle with accessing shelter and food.<sup>88</sup> Job losses were expected to rise.<sup>89</sup>

<sup>84</sup> Joint Organizations, "Stop Harassment of Community Representatives Over COVID-19 Petition," *LICADHO*, 4 May 2020, <http://www.licadho-cambodia.org/pressrelease.php?perm=450>.

<sup>85</sup> The World Bank, "Cambodia: Overview."

<sup>86</sup> Huaxia, "Over 130 Factories in Cambodia Suspended Operations as Orders Drop Amid Covid-19," *Xinhua*, 27 April 2020, [http://www.xinhuanet.com/english/2020-04/27/c\\_139012718.htm](http://www.xinhuanet.com/english/2020-04/27/c_139012718.htm).

<sup>87</sup> "Country Policy Responses: Cambodia," International Labour Organization, accessed 20 April 2020, <https://www.ilo.org/global/topics/coronavirus/country-responses/lang--en/index.htm#KH>.

<sup>88</sup> "Providing Protection and Support to Returning Migrants in Cambodia," UNAIDS, accessed 27 April 2020, [https://www.unaids.org/en/20200427\\_Cambodia\\_migrants](https://www.unaids.org/en/20200427_Cambodia_migrants).

<sup>89</sup> "The Garment Manufacturers Association in Cambodia (GMAC) expresses its Dissatisfaction with the European Union Following the Partial Suspension of the 'Everything But Arms' (EBA) Trade Program," *PR Newswire*, accessed 3 June 2020, <https://www.prnewswire.com/news-releases/the-garment-manufacturers-association-in-cambodia-gmac-expresses-its-dissatisfaction-with->

Cambodia responded to the economic challenges by imposing temporary emergency austerity measures, cutting 50 per cent of state expenditures.<sup>90</sup> It issued tax concessions,<sup>91</sup> credit support, and wage subsidies for the garment, textile, and footwear industries as well as the tourism and construction sectors,<sup>92</sup> all of which were in need of a bailout.<sup>93</sup> The National Bank urged commercial banks and microfinance institutions to delay loan repayment from borrowers.<sup>94</sup> The government also employed strategic diplomatic initiatives with China focused on solidarity during the pandemic; these overtures bore fruit when China promised to send emergency raw materials to Cambodia's factories over a period of five months.<sup>95</sup> The Ministry of Commerce separately appealed to buyers, mainly from Western countries, to maintain their commitment in purchasing arrangements for Cambodian garments, footwear, and travel goods.<sup>96</sup> Domestic stimulus, however, was limited to formal employment, leaving out a huge number of workers in informal sectors along with their families.<sup>97</sup> In 2013, garment and textile workers engaged in massive protests to demand living wages.<sup>98</sup> If wage losses and economic shocks continue, similar social unrest could ensue.<sup>99</sup>

Re-establishing economic growth could ease social tensions, but in the first half of 2020, the path forward is uncertain. Continued reliance on China was

the-european-union-following-the-partial-suspension-of-the-everything-but-arms-eba-trade-program-301005717.html; The Cambodia Footwear Association, "Statement on the Impacts of Covid-19," 4 April 2020, <http://www.cambodia-footwear.org/en/statement-en/270/detail>.

<sup>90</sup> "Prime Minister Speech on Covid-19 update," *Phnom Penh*, 7 April 2020. [https://feedback.facebook.com/watch/live/?v=560982204772016&ref=watch\\_permalink](https://feedback.facebook.com/watch/live/?v=560982204772016&ref=watch_permalink).

<sup>91</sup> Ministry of Economic and Finance, "Notification No. 1313 concerning Tax," 25 February 2020, <https://www.dfdl.com/resources/legal-and-tax-updates/cambodia-update-relief-provided-for-businesses-affected-by-covid-19-and-eba/>.

<sup>92</sup> "Policy Response to Covid-19: Policy Tracker on Cambodia," International Monetary Fund, accessed 3 June 2020, <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#C>.

<sup>93</sup> Ministry of Economic and Finance, "Decision No. 027 on Establishment of a Task Force to Plan for Budget Policy on Financing and Social Assistance in Controlling the Flight against Covid-19," 3 April 2020, <https://www.eurocham-cambodia.org/post/714/03-07-APRIL-KEEPING-YOU-INFORMED-RECENT-ANNOUNCEMENTS-BY-THE-ROYAL-GOVERNMENT>.

<sup>94</sup> National Bank of Cambodia, "Loan Restructuring," at 1.

<sup>95</sup> Sirivadh Hun, "China Sending Textiles for Cambodian Factories Amid Materials Shortage," *VOD*, 9 March 2020, <https://vodenglish.news/china-sending-textiles-for-cambodian-factories-amid-materials-shortage/>.

<sup>96</sup> Ministry of Commerce, "Letter No. 1452 to Garment, Footwear and Travel Goods Buyers Sourcing from Cambodia," 13 April 2020, <https://www.eurocham-cambodia.org/post/716/10-17-APRIL-KEEPING-YOU-INFORMED-RECENT-ANNOUNCEMENTS-BY-THE-ROYAL-GOVERNMENT>.

<sup>97</sup> Vannarith Chheang, "Cambodia in 2014: The Beginning of Concrete Reforms," *Southeast Asian Affairs* 2015 (2015), at 87–101.

<sup>98</sup> Chheang, "Concrete Reforms."

<sup>99</sup> Sarath Sorn, "Fears of Social Unrest Over Virus," *Khmer Times*, 4 May 2020, <https://www.khmertimeskh.com/50719660/fears-of-social-unrest-over-virus/>; Aleksandar S. Jovanovic et al., "Social Unrest," *OECD Reviews of Risk Management Policies*, OECD Publishing, 2012, DOI:<https://dx.doi.org/10.1787/9789264173460-en>.

tempting but would only partly support the Cambodian economy, as most buyers sourcing garments, textiles, and footwear from Cambodia are from Western countries. Reinstating full EBA tariff preferences could fuel Cambodia's exports in a way that would protect and benefit workers—and the Cambodian people as a whole—in turn setting the country back in the direction of growth and stability.

### *B. The Law on the Management of the Nation in State of Emergency*

Cambodia would have more effective emergency responses if it had health and financial laws that anticipated crises such as the Covid-19 pandemic; this would in turn protect lives, livelihoods, and human rights. But the State of Emergency Law, which empowers the government to respond to public health emergencies (among others), yet potentially infringes human rights, sparks the apprehension of many.<sup>100</sup> It was passed on 29 April 2020 without public consultation with international stakeholders, civil society groups, or nongovernmental organizations.<sup>101</sup>

The new law empowers the King of Cambodia to declare a state of emergency for a period of three months, subject to renewal, in times of great danger, such as war, military aggression, public health emergencies, severe threats to state security and public order, and natural disasters that threaten danger at the national level.<sup>102</sup> The purpose of this law is to maintain state security, keep public order, protect lives and people's health, and protect property and the environment.<sup>103</sup> It gives the government immense power during a state of emergency. In such a state, the government can, among other measures, ban or restrict movement, assembly, and work. It can impose a lockdown and self-isolation; evacuate, seize, or manage private property with compensation; set prices of goods and services; close public and private places; monitor all telecommunications; and ban or restrict the sharing of news which might cause public fear, chaos, and confusion and which would affect state security.<sup>104</sup> Penalties for violations are severe. Individuals found disobeying or resisting emergency orders are

<sup>100</sup> Human Rights Watch, "Cambodia: Emergency Bill Recipe for Dictatorship," 2 April 2020, <https://www.hrw.org/news/2020/04/02/cambodia-emergency-bill-recipe-dictatorship>.

<sup>101</sup> Narin Sun, "Cambodia's Controversial State of Emergency Draft Signed into Law," *Voice of America*, 30 April 2020, <https://www.voacambodia.com/a/cambodia-s-controversial-state-of-emergency-draft-signed-into-law/5398771.html>.

<sup>102</sup> *The Law on the Management of the Nation in State of Emergency*, Pub. L. No. 0420/018 (2020), arts. 3 and 4.

<sup>103</sup> *The Law on the Management of the Nation in State of Emergency*, art. 1.

<sup>104</sup> *The Law on the Management of the Nation in State of Emergency*, art. 5.

subject to imprisonment for between one month and ten years in addition to being fined.<sup>105</sup> Legal entities will also face heavy fines.<sup>106</sup> Government officers face sanctions for abusing their power.<sup>107</sup> “[T]he broadly-worded language concerning power and penalty” does not sit well with Cambodia’s international human rights obligations, according to the UN human rights expert group.<sup>108</sup> Critics accused the government of using the legal system, including the State of Emergency Law,<sup>109</sup> as a weapon to “overwhelm and defeat [its] real and perceived opponents.”<sup>110</sup>

The government has already exercised extensive power to respond to Covid-19 and its related impacts prior to passing the State of Emergency Law. This law consolidates and legitimates the government in vaguely defined situations; it would be dangerous if it were used to enforce public order by suppressing rights-related activities such as peaceful assembly or protests over the government’s health, economic, or political responses. Considering that Cambodia is bound morally and legally to protect human rights, any endeavours to address emergencies should not put them in jeopardy.

## 6. Discussion and Conclusion

Covid-19 will transform Cambodia’s healthcare, economics, and politics in many ways. As it stands, Cambodia’s healthcare system remains deficient,<sup>111</sup> unable to handle a cluster of outbreaks alone, due to limited medical equipment, technical skills, and financial means.<sup>112</sup> By working with development partners to strengthen the public health system,<sup>113</sup> Cambodia successfully managed the first wave of Covid-19 while tentatively preparing for more possible outbreaks.

<sup>105</sup> *The Law on the Management of the Nation in State of Emergency*, art. 7.

<sup>106</sup> *The Law on the Management of the Nation in State of Emergency*, art. 9.

<sup>107</sup> *The Law on the Management of the Nation in State of Emergency*, art. 10.

<sup>108</sup> UN Human Rights Expert Group, “Letter of the UN Human Rights Expert Group on the Draft Law on the Management of the Nation in State of Emergency (OL KHM 1/2020),” 9 April 2020, <https://www.business-humanrights.org/sites/default/files/documents/UN%20experts%20sent%20a%20communication%20expressing%20concerns%20over%20Cambodia%E2%80%99s%20draft%20law%20on%20the%20management%20of%20the%20nation%20during%20state%20of%20emergency.pdf>.

<sup>109</sup> International Commission of Jurists, “Cambodia: State of Emergency Bill Violates the Rule of Law,” International Commission of Jurists, 8 April 2020, <https://www.icj.org/cambodia-state-of-emergency-bill-violates-the-rule-of-law/>.

<sup>110</sup> Kingsley Abbott, “Misuse of Law Will Do Long-Term Damage to Cambodia,” International Commission of Jurists, 28 July 2018, <https://www.icj.org/misuse-of-law-will-do-long-term-damage-to-cambodia/>.

<sup>111</sup> David Hutt, “Health System.”

<sup>112</sup> Niem Chheng, “Donations Pour into Cambodia for Covid-19 Fight,” *Phnom Penh Post*, 28 April 2020, <https://www.phnompenhpost.com/national/donations-pour-cambodia-covid-19-fight>.

<sup>113</sup> The World Health Organization, “Fight Covid-19.”



But recovering from the pandemic-induced economic shock would involve rethinking internal politics and geo-politics and power dynamics; a dilemma for the government. Within Cambodia, the government treated foreign Covid-19 patients and assisted uninfected foreigners, apparently out of generosity rather than a desire for publicity. It provided support to workers, businesses, and other Cambodians through its policies, strategies, and enforcement measures. However, the government gambled with the health of Cambodians to buttress international diplomacy with Western countries, especially regarding the *Westerdam* ship. Although controversial, this action signaled its willingness to reconcile with diplomatic partners beyond China. Since Cambodia is already party to international human rights conventions, respecting these prerequisites to access full EBA trade preferences should not be seen as an undue burden. Participatory engagement, public consultation, and free expression, guaranteed as rights, offer insights into the needs of vulnerable populations, and are especially important during a pandemic. Nurturing this atmosphere would allow the government to best provide those groups with services and support while protecting the economy.

Prolonged economic difficulties may lead to social unrest, but enacting emergency response legislation without a strong oversight mechanism,<sup>114</sup> forcing peace and stability at the expense of human rights, fuels both internal dissatisfaction and economic disengagement with the Western world, undermining the government's desire for economic growth. Only with a respect for human rights and an eye toward sustainable policy-making can Cambodia grow its economy while ensuring the health of its citizenry.

<sup>114</sup> See *International Covenant on Civil and Political Rights*, 1966, art. 4. Article 4 provides: "the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin." The ICCPR does not permit derogation from Articles 6, 7, 8 (Paragraphs 1 and 2), 11, 15, 16, and 18, which concern the right to life, freedom from torture, freedom from slavery, fair trial, contractual obligation, the right to recognition before the law, and freedom of thoughts, conscience, and religion.

# Indonesia's Response to the Pandemic

## Too Little, Too Late?

*Nadirsyah Hosen\** and *Nurussyariah Hammado\*\**

### 1. Introduction

In October 2019, after winning the April presidential election, Indonesian President Joko Widodo (known as Jokowi) appointed the cabinet for his second term.<sup>1</sup> Programs to implement his campaign promises, as well as a plan to move the capital city from Jakarta to a new area in East Kalimantan, had been publicly announced. The atmosphere was good at this time, and there was a sense of hope and positive feeling across the nation.<sup>2</sup> Little did he know that two months later, a novel coronavirus would be identified in Wuhan, China. The virus spread quickly to other parts of the world, leading the World Health Organization (WHO), on 30 January 2020, to declare the Covid-19 outbreak a Public Health Emergency of International Concern (PHEIC) and subsequently, on 11 March 2020, a pandemic.<sup>3</sup> The virus ruined dramatically the Jokowi administration's plan and program. This chapter seeks to evaluate the Jokowi government's response and explain why it has not been capable of responding quickly to Covid-19.

There were four main barriers: first, the unhealthy relationship between the Indonesian Medical Association (*Ikatan Dokter Indonesia*, or IDI) and the recently appointed minister of health affairs; second, the political rivalry between President Jokowi's administration and the current governor of Jakarta, the national capital of Indonesia; third, the incompetence of the Jokowi cabinet, where lack of leadership has been shown during the crisis; and finally, the conservative

\* Senior Lecturer, Faculty of Law, Monash University.

\*\* Senior Lecturer, Universitas Negeri Makassar.

<sup>1</sup> "Indonesia election: Joko Widodo re-elected as president," *BBC News*, 21 May 2019, <https://www.bbc.com/news/world-asia-48331879>; on how ideology played an important role in voting behaviour during the election, see Diego Fossati "The Resurgence of Ideology in Indonesia: Political Islam, Aliran and Political Behaviour," *Journal of Current Southeast Asian Affairs* 38, no. 2 (2019): 119–148.

<sup>2</sup> "Rupiah gains ground on appointment of professionals to Jokowi's Cabinet," *The Jakarta Post*, 22 October 2019, <https://www.thejakartapost.com/news/2019/10/22/rupiah-gains-ground-on-appointment-of-professionals-to-jokowis-cabinet.html>.

<sup>3</sup> "Rolling updates on coronavirus disease (COVID-19)," WHO, accessed 13 May 2020, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

religious groups' position, rejecting the request not to organize mass prayers. This chapter argues that the combination of these four barriers contributed to the slow response and ineffectiveness of the government's policies and regulations during the Covid-19 crisis. The response was too little, too late. The Jokowi administration was pushed into a corner, making unclear policies, uncoordinated responses, and conflicting statements.

## 2. Overview of Jokowi Government's Response to Covid-19

The government had been in denial. That was the initial response from the Jokowi administration, despite its neighbours reporting numerous confirmed cases of Covid-19. The first case in Southeast Asia was in Singapore, confirmed on 23 January.<sup>4</sup> Malaysia confirmed its first case on 25 January.<sup>5</sup> However, until early March, the Indonesian government claimed that there were no cases of infection from Covid-19 in the country. The first confirmed case was reported on 2 March 2020, when a dance instructor and her mother were reported to have been infected by a Japanese national.<sup>6</sup> By 9 April, the pandemic had spread to all thirty-four provinces in the country after the province of Gorontalo, Sulawesi, confirmed its first case, with Jakarta, East Java, and West Java being the worst hit.

So, what happened between late January and early March? Why was there no case of Covid-19 in Indonesia during that period? In February, Indonesia's health minister attributed the country's absence of coronavirus cases to prayer.<sup>7</sup> A study by Harvard University public health researchers, in the first week of February, found that Indonesia should have reported a coronavirus outbreak, and could have undetected cases,<sup>8</sup> given its extensive air links to China and the

<sup>4</sup> See De Visser and Straughan, Chapter 15, this volume.

<sup>5</sup> See Tayeb and Por, Chapter 22, this volume.

<sup>6</sup> Alan Weedon, "Coronavirus COVID-19 has now reached Indonesia, President Joko Widodo confirms," *ABC News*, 2 March 2020, <https://www.abc.net.au/news/2020-03-02/indonesia-records-first-cases-of-covid-19-coronavirus/12018090>.

<sup>7</sup> Joe Cochrane, "'We owe it to God': as Indonesia prays, how is it keeping the coronavirus at bay?," *South China Morning Post*, 18 February 2020, <https://www.scmp.com/week-asia/health-environment/article/3051068/we-owe-it-god-indonesia-prays-how-it-keeping>.

<sup>8</sup> Pablo M. De Salazar et al., "Using predicted imports of 2019-nCoV cases to determine locations that may not be identifying all imported cases" *medRxiv*, 2020.02.04.20020495, <https://doi.org/10.1101/2020.02.04.20020495>.

Gemma Holliani Cahy, "'It's meant to help': Harvard professor responds after government dismisses study on undetected coronavirus cases," *The Jakarta Post*, 15 February 2020, <https://www.thejakartapost.com/news/2020/02/14/its-meant-to-help-harvard-professor-responds-after-government-dismisses-study-on-undetected-coronavirus-cases.html>.

city of Wuhan, the epicentre of the outbreak. The health minister dismissed this study as “insulting.”<sup>9</sup>

In February, unlike its neighbours, which were imposing tough travel restrictions, President Jokowi instead offered discounts of up to 30 per cent to entice tourists to visit Indonesia. Between January and March, flights from countries with high infection rates, including China, South Korea, and Thailand, continued to operate. His government was also reported to have allocated millions of dollars to pay social media influencers for tourism promotions.<sup>10</sup> It seemed that his administration approached Covid-19 as an opportunity to boost trade, investment, and tourism. By declaring Indonesia a place safe from Covid-19, the Jokowi administration hoped that people would invest and visit. It looked smart but proved in the end to be a dangerous game.

The main problem with this approach was that President Jokowi could not foresee that Covid-19 was not a regional issue, but a pandemic that would change the world. The failure of his administration to anticipate the trajectory of the outbreak led to its slow response. In fact, the government gave the impression to the public that Covid-19 was a small matter; the health minister described the coronavirus as a “self-limited disease” from which sufferers could recover on their own by “increasing their immunity.”<sup>11</sup> Even after the first case of the virus was confirmed subsequently in Indonesia, the administration continued to downplay its seriousness. The home affairs minister urged the public to eat more bean sprouts and broccoli;<sup>12</sup> the coordinating minister for maritime affairs and investment insisted that the virus could not survive in tropical climates;<sup>13</sup> and President Jokowi sang the praises of *jamu* (a traditional herbal remedy) to boost the immune system against Covid-19.<sup>14</sup> These comments implied that the response was an individual matter, not a public health issue requiring careful planning and coordinated governmental response.

<sup>9</sup> “‘It’s insulting’: Indonesia criticizes US study concerns over no coronavirus cases,” *The Jakarta Post*, 12 February 2020, <https://www.thejakartapost.com/news/2020/02/12/its-insulting-indonesia-criticizes-us-study-concerns-over-no-coronavirus-cases.html>.

<sup>10</sup> Tim Lindsey and Tim Mann, “Indonesia was in denial over coronavirus. Now it may be facing a looming disaster,” *The Conversation*, 9 April 2020, <https://theconversation.com/indonesia-was-in-denial-over-coronavirus-now-it-may-be-facing-a-looming-disaster-135436>.

<sup>11</sup> Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation, “Health Minister on Coronavirus Test: ‘We Will Inform as It Is,’” 2 March 2020, <https://setkab.go.id/en/health-minister-on-coronavirus-test-we-will-inform-as-it-is/>.

<sup>12</sup> “Tito Sarankan Warga Banyak Makan Taoge untuk Tangkal Corona,” *CNN Indonesia*, 17 March 2020, <https://www.cnnindonesia.com/nasional/20200317152546-20-484236/tito-sarankan-warga-banyak-makan-taoge-untuk-tangkal-corona>.

<sup>13</sup> Tim Detikcom, “Saat Luhut Bicara Corona Tak Tahan Cuaca Panas Indonesia,” *Detik*, 3 April 2020, <https://news.detik.com/berita/d-4963524/saat-luhut-bicara-corona-tak-tahan-cuaca-panas-indonesia>.

<sup>14</sup> “Indonesia President Joko stokes speculation herbs can fight coronavirus,” *The Strait Times*, 13 March 2020, <https://www.straitstimes.com/asia/se-asia/indonesia-president-joko-stokes-speculation-herbs-can-fight-coronavirus>.

On 2 March 2020, Indonesia finally declared that Covid-19 had reached the archipelago.<sup>15</sup> This meant that the official response and reaction came two months late, compared to its neighbours. Jokowi admitted that he had been deliberately holding back information on Covid-19 cases to prevent the public from panicking. The media reported the president's statement:

Indeed, we did not deliver certain information to the public because we did not want to stir up panic. We have worked hard to overcome this, since the novel coronavirus outbreak can happen regardless of the country's borders.<sup>16</sup>

After the first case was confirmed, the government took nearly a month finally to begin to act, banning mass gatherings through large-scale social restrictions (*Pembatasan Sosial Berskala Besar*, or PSBB). It also announced the release of 30,000 prisoners from the country's overcrowded and unhealthy prisons. The Jokowi administration also issued a government regulation in lieu of law (*Peraturan Pemerintah Pengganti Undang-Undang*, known as a *Perppu*), which boosted state spending to IDR 405.1 trillion (USD 24.6 billion). As a result, the budget deficit was anticipated to widen to 5.07 per cent of GDP. Under the emergency power stipulated in Article 22 of the 1945 Constitution, the government may issue a *Perppu*, but this measure needs to be approved by Parliament during its next session.<sup>17</sup>

Accordingly, the *Perppu* was intended to serve as a foundation for the government, including the banking and financial authorities, to carry out extraordinary measures to ensure the people's health and to safeguard the national economy and the stability of the financial system. The program and budget proposed in October 2019, when Jokowi appointed his cabinet, had to be adjusted. The *Perppu*<sup>18</sup> allowed the government to extend the state budget deficit beyond the normal limit of 3 per cent of GDP and to allocate extra spending to the Covid-19 response while protecting officials from any legal charges as long as they acted in good faith and according to law.<sup>19</sup> The government allocated extra amounts for healthcare (IDR 75 trillion), social protection (IDR 110 trillion), and tax incentives and credits for enterprises (IDR 70.1 trillion). The largest amount,

<sup>15</sup> Joshua Nevett, "Coronavirus: I watched the president reveal I had Covid-19 on TV," *BBC*, 6 May 2020, <https://www.bbc.com/news/world-asia-52501443>.

<sup>16</sup> Dyaning Pangestika, "'We don't want people to panic': Jokowi says on lack of transparency about COVID cases," *The Jakarta Post*, 13 March 2020, <https://www.thejakartapost.com/news/2020/03/13/we-dont-want-people-to-panic-jokowi-says-on-lack-of-transparency-about-covid-cases.html>.

<sup>17</sup> *Constitution of the Republic of Indonesia*, 1945, art. 22.

<sup>18</sup> *Perppu* No. 1 of 2020.

<sup>19</sup> Ghina Ghaliya, "House passes Perppu on COVID-19 response amid concerns of embezzlement," *The Jakarta Post*, 12 May 2020, <https://www.thejakartapost.com/news/2020/05/12/house-passes-perppu-on-covid-19-response-amid-concerns-of-embezzlement.html>.

IDR 150 trillion, was set aside for economic recovery programs, including credit restructuring and financing for small and medium-sized businesses.<sup>20</sup> On 12 May 2020, Parliament approved the *Perppu* and voted it into law.<sup>21</sup>

An application was immediately lodged with the Constitutional Court to challenge the validity of *Perppu* No. 1 of 2020, led by Amien Rais, the former Speaker of the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*, or MPR).<sup>22</sup> However, since the *Perppu* had been approved by Parliament and become an act, the applicants had to lodge a new application to the Constitutional Court. The earlier application was based on the grounds, among others, that this *Perppu* was contrary to the Constitution, in granting immunity to officials for any legal charges related to their execution of the government's Covid-19 plan.<sup>23</sup> Accordingly, it would be very unlikely that the court would declare the act invalid, but if it agreed with the applicants, it would partially undermine the government's efforts.

As of 15 May, Indonesia had recorded 16,496 cases, the second-highest total in Southeast Asia, behind Singapore.<sup>24</sup> In terms of numbers of deaths, Indonesia ranked fifth in Asia, with 1,076.<sup>25</sup> However, the number of deaths may be much higher than reported, as those who died without having been tested and confirmed to be positive were not counted in the official figures.<sup>26</sup> Considering these undetected or under-detected cases, WHO Director General Tedros Adhanom Ghebreyesus sent an official letter on 15 March 2020, followed by a direct phone call to Jokowi, requesting that Indonesia scale up its emergency response and declare a national emergency.<sup>27</sup> Responding to domestic and international pressure, Jokowi declared a public health emergency on 31 March and opted for PSBB rather than a territorial quarantine.<sup>28</sup>

<sup>20</sup> *Perppu* No. 1 of 2020.

<sup>21</sup> As of May 2020, the law number had not yet been assigned.

<sup>22</sup> Yulida Medistiara, "Sidang Perdana Perppu Corona, MK Minta Gugatan Amien Rais-MAKI Diperbaiki," *Detik*, 28 April 2020, <https://news.detik.com/berita/d-4995019/sidang-perdana-perppu-corona-mk-minta-gugatan-amien-rais-maki-diperbaiki>.

<sup>23</sup> Rahmi Nurfajriani, <https://www.pikiran-rakyat.com/nasional/pr-01383149/perppu-nomor-1-tahun-2020-disahkan-guru-besar-unpad-imunitas-sempurna-untuk-pejabat-berwenang>, *Pikiran Rakyat*, 15 May 2020, <https://www.pikiran-rakyat.com/nasional/pr-01383149/perppu-nomor-1-tahun-2020-disahkan-guru-besar-unpad-imunitas-sempurna-untuk-pejabat-berwenang>.

<sup>24</sup> "Reported Cases and Deaths by Country, Territory, or Conveyance," Covid-19 Coronavirus Pandemic, Worldometers, <https://www.worldometers.info/coronavirus/#countries>.

<sup>25</sup> "Reported Cases and Deaths by Country, Territory, or Conveyance."

<sup>26</sup> Tom Allard and Kate Lamb "Exclusive: More than 2,200 Indonesians have died with coronavirus symptoms, data shows," *Reuters*, 28 April 2020, <https://www.reuters.com/article/us-health-coronavirus-indonesia-casualti/exclusive-more-than-2200-indonesians-have-died-with-coronavirus-symptoms-data-shows-idUSKCN22A04N>.

<sup>27</sup> "COVID-19: WHO urges Jokowi to declare national emergency," *The Jakarta Post*, 14 March 2020, <https://www.thejakartapost.com/news/2020/03/14/covid-19-who-urges-jokowi-to-declare-national-emergency.html>.

<sup>28</sup> "Jokowi declares COVID-19 health emergency, imposes large-scale social restrictions," *The Jakarta Post*, 31 March 2020, <https://www.thejakartapost.com/news/2020/03/31/jokowi-declares-covid-19-health-emergency-imposes-large-scale-social-restrictions.html>.

### 3. Unhealthy Relationship: A New Minister and the Medical Association

We have seen that both President Jokowi and Health Minister Terawan Agus Putranto repeatedly denied that Indonesia had any cases of the coronavirus, despite mounting evidence to the contrary, in the first two months of 2020. The situation became worse, however, owing to the unhealthy relationship between the health minister and the IDI, undermining the effectiveness of the government's response. Putranto was appointed as the health minister in October 2019.<sup>29</sup> However, his appointment was criticized by the IDI.

Long before his appointment, on 12 February 2018, the IDI had issued a disciplinary finding against Putranto. As a member of the IDI, a highly respected medical association, Putranto had been found guilty of violating its code of ethics. The IDI suspended Putranto's membership for two years and terminated his medical practice permit. They found that he had violated the code of ethics by adopting and promoting a method of brainwashing therapy that had not yet been proven clinically safe and effective. When the IDI heard that Jokowi was considering appointing Putranto to the ministerial position, it wrote to the president on 30 September 2020, urging him not to do so,<sup>30</sup> ultimately to no effect. When Putranto was appointed health minister, he was still under IDI sanction.

The unhealthy relationship between the health minister and the medical association had a negative effect on the government's response to the Covid-19 crisis. As in other countries, doctors and nurses were on the front lines in dealing with this pandemic.<sup>31</sup> Owing to the troubled relationship, the Ministry of Health had not created a program to deal with the pandemic. *Tempo* magazine reported that Jokowi and his advisors were preparing their own plan, as they had not received any program or planning from the Ministry of Health.<sup>32</sup> At a practical level, Putranto used his position as a retired military general to ask for help from army doctors,<sup>33</sup> keeping his distance from the IDI. Meanwhile, doctors have pleaded

<sup>29</sup> Kementerian Sekretariat Negara, "Presiden Blak-blakan Soal Alasannya Memilih dr. Terawan, Tito Karnavian hingga Yasonna Jadi Menteri," 24 October 2019, [https://www.setneg.go.id/baca/index/presiden\\_blak\\_blakan\\_soal\\_alasannya\\_memilih\\_dr\\_terawan\\_tito\\_karnavian\\_hingga\\_yasonna\\_jadi\\_menteri](https://www.setneg.go.id/baca/index/presiden_blak_blakan_soal_alasannya_memilih_dr_terawan_tito_karnavian_hingga_yasonna_jadi_menteri).

<sup>30</sup> Eviera Paramita Sandi, "IDI Tak Setujui Pengangkatan Menkes Hingga Tulis Surat Ke Jokowi, Ini Reaksi Dokter Terawan," *Tribun News*, 24 October 2019, <https://bali.tribunnews.com/2019/10/24/idi-tak-setuju-dirinya-jadi-menkes-hingga-tulis-surat-ke-jokowi-ini-reaksi-dokter-terawan>.

<sup>31</sup> See Ho and Cheung, Chapter 17, this volume.

<sup>32</sup> Raymundus Rikang, "Lobi Corona di Jenewa," *Tempo Magazine*, 7 April 2020, <https://majalah.tempo.co/read/laporan-utama/159896/gusar-istana-terhadap-terawan-soal-corona>.

<sup>33</sup> "Panglima TNI: 988 Prajurit Tenaga Medis Tersebar di 109 RS Tangani Wabah Corona," *Liputan 6*, 15 April 2020, <https://www.liputan6.com/news/read/4228645/panglima-tni-988-prajurit-tenaga-medis-tersebar-di-109-rs-tangani-wabah-corona>.

with the ministry urgently to provide them with more personal protective equipment (PPE) amid a terrifying shortage.

In May 2020, a hospital crisis loomed as reports indicated that the combined capacity of the 132 referral hospitals designated to treat Covid-19 patients was far from adequate.<sup>34</sup> Even so, the government refused to release all information about Covid-19 patients and its own preparedness, leaving medical workers in the dark and potentially putting their lives at risk. The minister was also criticized for his lack of coordination with hospitals and for failing to provide sufficient financial resources and equipment. He was also criticized for failing to maintain the quality of health workers, administrative staff, and data centres in hospitals.<sup>35</sup> It is also alleged that the minister centralized coronavirus swab testing in the Ministry's Health Research and Development Agency (*Balitbangkes*) in Jakarta, slowing down the health authorities' response. Samples from provinces had to be sent to Jakarta, a long process considering Indonesia's geography.<sup>36</sup> However, Jokowi maintained Putranto in his position, asking him only not to talk in public about Covid-19. Instead, the government appointed a spokesperson to provide Covid-19 updates to the public and the media.<sup>37</sup>

The ministry and the IDI have also disagreed over the data. According to IDI chairman Daeng Faqih in April 2020, Indonesia's death toll from the coronavirus had likely reached 1,000, nearly double the official figure of 582.<sup>38</sup> The official figures, it seems, did not include deaths of suspected Covid-19 patients whose tests were awaiting analysis. The public was left unsure as to which data was more reliable: the ministry's or the IDI's. Instead of cooperating and collaborating, the unhealthy relationship between the two institutions continued to undermine Indonesia's response to the pandemic.

<sup>34</sup> "COVID-19: Inadequate medical supplies take toll on lives of Indonesian medical workers," *The Jakarta Post*, 22 March 2020, <https://www.thejakartapost.com/news/2020/03/22/covid-19-inadequate-medical-supplies-take-toll-on-lives-of-indonesian-medical-workers.html>.

<sup>35</sup> "Terawan must go, civil groups say, demanding crisis-sensitive health minister," *The Jakarta Post*, 17 March 2020, <https://www.thejakartapost.com/news/2020/03/17/terawan-must-go-civil-groups-say-demanding-crisis-sensitive-health-minister.html>.

<sup>36</sup> "Terawan must go, civil groups say, demanding crisis-sensitive health minister."

<sup>37</sup> "Govt appoints Achmad Yurianto as spokesperson for COVID-19-related matters in Indonesia," *The Jakarta Post*, 4 March 2020, <https://www.thejakartapost.com/news/2020/03/04/govt-appoints-achmad-yurianto-as-spokesperson-for-covid-19-related-matters-in-indonesia.html>.

<sup>38</sup> "Indonesia's death toll may be double official figure: Doctors' association," *The Straits Times*, 20 April 2020, <https://www.straitstimes.com/asia/se-asia/indonesias-death-toll-may-be-double-official-figure-doctors-association>.



#### 4. Rivalry of National Government and National Capital City

Indonesia has also been subject to an ongoing clash between the Jokowi administration and the Jakarta governor, Anies Baswedan. The conflict started when Jokowi dismissed Baswedan from his position as minister of education and culture in July 2016, less than two years into his term. Baswedan became a bitter opponent and competed in the 2017 Jakarta gubernatorial election against Jokowi's ally, Basuki Tjahaya Purnama (known as Ahok), who subsequently became governor when Jokowi was appointed president.<sup>39</sup> A hostile campaign led to the blasphemy trial of Ahok, and Baswedan was selected as the new governor. Baswedan is seen as a potential candidate for the 2024 presidential election. Jokowi would be constitutionally barred from running for a third time, but his camp and supporters hope they will continue to govern beyond 2024. Baswedan is considered as the one who might be able to stop them.

Against this background, when the coronavirus hit Indonesia, including Jakarta, there was an implicit competition between the two administrations. It was assumed that a new leader would emerge amid the crisis. Therefore, the Jokowi administration's response to Covid-19 was heavily influenced by its calculations regarding Baswedan's manoeuvres, straining the relationship between the national government and that of the national capital.

Baswedan claimed to an Australian journalist that he had started monitoring and tracking potential Covid-19 cases in Jakarta in January, implying that he acted more than a month before Indonesia's first reported case. He also set up a hotline number for the 190 hospitals in Jakarta to report suspected cases. He is reported to have said:

And then when the numbers started to go up continuously, at that time we were not allowed to do testing. So whenever we have cases, we send the samples to the [national government-controlled] national lab. And then the national lab will inform, positive or negative. By the end of February, we were wondering why it is all negative? At that time I decided to go public and I said we have been monitoring, these are the numbers. Immediately it was sort of responded to by the Ministry [of Health] who said we have no positive cases.<sup>40</sup>

<sup>39</sup> On the 2017 election, see Nithin Coca, "The Fall of Ahok and Indonesia's Future," *The Diplomat*, 21 April 2017, <https://thediplomat.com/2017/04/the-fall-of-ahok-and-indonesias-future/>; on the 2012 election, see Nadirsyah Hosen, "Race and Religion in the 2012 Jakarta Gubernatorial Election: The Case of Jokowi-Ahok," in T. Lindsey and H. Pausacker eds., *Religion, Law and Intolerance in Indonesia* (London: Routledge, 2016), 180–194.

<sup>40</sup> James Massola, "Not allowed to do testing: governor says Jakarta was tracking COVID-19 cases in January," *The Sydney Morning Herald*, 7 May 2020, <https://www.smh.com.au/world/asia/not-allowed-to-do-testing-governor-says-jakarta-was-tracking-covid-19-cases-in-january-20200507-p54qnh.html>.

Baswedan implied that the health minister's denials, discussed earlier, contributed to the national government's delayed response, with implications at many levels, including for Baswedan's administration in Jakarta. The governor also expressed frustration with the national government, especially the Ministry of Health, for a lack of transparency; its approach was to withhold the actual data to avoid triggering fear and panic. For Baswedan, transparency as to the number of cases would have provided a sense of security.

Another report claimed that the Jokowi government systematically eroded Baswedan's response to the crisis. Jakarta was Indonesia's epicentre; however, the governor's requests to impose social-distancing measures were repeatedly rejected by the national government.<sup>41</sup> Some inferred that the Jokowi government did not want the public to see this request as Baswedan's taking initiative to handle the crisis properly. Only after the national government declared a nationwide health emergency was Baswedan's request approved (after further delays by the health minister).<sup>42</sup>

However, not all of Baswedan's program was properly executed. His restriction on the operational hours of public transportation in Jakarta as a social distancing measure backfired, with large crowds and long lines at the Transjakarta and MRT Jakarta stations across the capital at peak times on a busy day, Monday, 16 March. MRT Jakarta significantly reduced its capacity by almost three-quarters; Transjakarta also announced service reductions between 16 and 30 March and suspended its evening services. The chaos arose from a lack of coordination on the Work From Home program. Had it worked, the reduction in public transport services would have made sense, but only a few companies followed it. At the same time, those in the vast informal workforce still worked in public spaces and on the street and continued using public transport. Restrictions in public transport made commuters squeeze into packed buses and rail stations, compounding the risk of Covid-19 transmission.

The national government, through the acting minister of transport, also cancelled Governor Baswedan's regulations preventing intercity buses from entering and leaving Jakarta to further limit the spread of Covid-19. However, the national government wanted first to calculate the economic impact of this measure.<sup>43</sup> Again, the political rivalry between the two governments sowed confusion and demonstrated a lack of coordination.

<sup>41</sup> Sana Jaffrey, "Coronavirus Blunders in Indonesia Turn Crisis into Catastrophe," Carnegie Endowment for International Peace, 29 April 2020, <https://carnegieendowment.org/2020/04/29/coronavirus-blunders-in-indonesia-turn-crisis-into-catastrophe-pub-81684>.

<sup>42</sup> Sana Jaffrey, "Coronavirus Blunders in Indonesia Turn Crisis into Catastrophe."

<sup>43</sup> Supriatin, "3 The Anies Baswedan policy canceled by the central government," *EXBulletin*, 1 April 2020, <https://exbulletin.com/politics/45862?banking&hosting&=1>.

## 5. Uncoordinated Response and Lack of Leadership

The administrative and political structure of Indonesia makes coordinating the response to Covid-19 challenging. A pandemic is not only a matter for the Ministry of Health. It intersects with other ministries, such as tourism, finance, law, education. With a population over 240 million, Indonesia's response required coordination over thirty-four provinces with markedly different geographic conditions and health-system capacities. Good leadership mattered. Sadly, it was missing in Indonesia's response. Even apart from the central government's clash with the Jakarta administration, members of Jokowi's own administration issued different and conflicting statements and even regulations, signalling to the already confused public a lack of coordination among key government officers.

Take, for example, the way the government communicates to the public about its decisions to ban or not to ban the *mudik*—the annual tradition of returning to one's home village after fasting during the holy month of Ramadan, to celebrate *Idul Fitri* (Eid). This tradition normally involves approximately 20 million people. The potential for spreading the virus was real, from using crowded public transportation, meeting and visiting families and friends in the villages, shaking hands as a gesture of mutual forgiveness, and dining together. How did the government deal with this challenge?

After a cabinet meeting on 2 April, presidential spokesperson Fadjoel Rachman released a statement insisting there would be no official ban on the *mudik*. However, he said, travellers should self-isolate for the recommended two-week period; they would, in the meantime, be placed under general observation (ODP) when they arrived in their hometowns. He also said that Muslim leaders should encourage people not to travel for *mudik*, despite there being no official travel ban.<sup>44</sup> Rachman's statement was confusing. For instance, the public holiday when travellers go on *mudik* is around one week, and they can extend it by another week if they are not government employees. Therefore, when the government asked the *mudik* travellers to self-isolate for two weeks after arriving in their home villages, many questioned the purpose of a two-week *mudik*, if they had to self-isolate during this period; they also wondered how local authorities could provide facilities and treatment to ensure that the self-isolation actually happened. Later that day, Secretary of State Pratikno sought to clarify Rachman's statement, saying the president had actually called on the people not to go back to their hometowns, although he did not categorically state that the president

<sup>44</sup> Marchio Irfan Gorbiano, "COVID-19: Jokowi allows 'mudik', asks community units to monitor potential virus carriers," *The Jakarta Post*, 2 April 2020, <https://www.thejakartapost.com/news/2020/04/02/covid-19-jokowi-allows-mudik-asks-community-units-to-monitor-potential-virus-carriers.html>.

would ban the *mudik*. However, the president again stopped short of issuing strict orders to prevent people from mobilizing, calling instead for greater community oversight at the village level, with the monitoring of recent arrivals from Greater Jakarta.<sup>45</sup> The president himself said he was open to adjusting the dates of *Idul Fitri*, in consideration of the problems for those unable to return to their hometowns for *mudik*.<sup>46</sup> After Pratikno had waded into the conversation, Fadjoel revised his statement, advising people not to return to their hometowns and adding a point about social assistance for informal workers, many of whom had lost their source of income as economic activities slowed in the capital. The approach taken was to provide money for those who did not travel on *mudik*, so they could survive during their stay at home.

Not only did the government officer issue confusing and conflicting statements, but the root of the problem was the unclear position of the president himself: to ban or not to ban *mudik*. He seemed afraid to act decisively, instead seeking a compromise. Provincial and municipal authorities were also confused, trying to understand the central government's position. Regional hospitals were not as equipped to handle an outbreak as were those in the capital, should travellers from Jakarta spread the virus during *mudik*.<sup>47</sup> It took three weeks for Jokowi to clarify his position. On 24 April, the central government officially banned *mudik*.<sup>48</sup> The decision came too late. Many travellers had already gone on *mudik*, fearing that the government would ban it. Many *mudik* travellers were already back in their home villages, creating problems for local authorities. For instance, almost 900 buses carrying more than 14,000 passengers arrived in Wonogiri, Central Java, from the Greater Jakarta area.<sup>49</sup> Similar numbers journeyed to West Java.<sup>50</sup>

On 13 March 2020, the central government set up a Coronavirus Disease Response Acceleration Task Force (*Gugus Tugas Percepatan Penanganan Penyakit*

<sup>45</sup> Marchio Irfan Gorbiano, "Be more coherent with COVID-19 announcements, analysts tell Jokowi," *The Jakarta Post*, 10 April 2020, <https://www.thejakartapost.com/news/2020/04/10/be-more-coherent-with-covid-19-announcements-analysts-tell-jokowi.html>.

<sup>46</sup> Gorbiano, "Be more coherent with COVID-19 announcements, analysts tell Jokowi."

<sup>47</sup> Belinda Spagnoletti, "Indonesia's lockdown dilemma: mudik is a safety net for some, but may worsen the Covid-19 public health disaster," *Indonesia at Melbourne*, 6 April 2020, <https://indonesiaatmelbourne.unimelb.edu.au/indonesias-lockdown-dilemma-mudik-is-a-safety-net-for-some-but-may-worsen-the-covid-19-public-health-disaster/>.

<sup>48</sup> Arys Aditya and Harry Suhartono, "Indonesia Bans Annual Holiday Exodus to Combat Virus Spread," *Bloomberg*, 21 April 2020, <https://www.bloomberg.com/news/articles/2020-04-21/indonesia-bans-mass-travel-ahead-of-eid-festival-to-combat-virus>.

<sup>49</sup> "Di Tengah Wabah Corona, Ribuan Perantau Wonogiri di Jabodetabek Pulang Kampung," *Kumparan*, 25 March 2020, <https://kumparan.com/kumparannews/di-tengah-wabah-corona-ribuan-perantau-wonogiri-di-jabodetabek-pulang-kampung-1t5rkyZ2dVvk>.

<sup>50</sup> Ahmad Fikri, "ODP Corona Jawa Barat Melonjak, Kepala Dinkes: Sebagian Pemudik," *Tempo*, 31 March 2020, <https://nasional.tempo.co/read/1326285/odp-corona-jawa-barat-melonjak-kepala-dinkes-sebagian-pemudik>.

*Virus Corona 2019*) led by three-star general Doni Monardo, in his capacity as head of the National Agency for Disaster Countermeasures (*Badan Nasional Penanggulangan Bencana*, or BNPB).<sup>51</sup> This head of BNPB is a ministerial-level position, allowing the agency to take direct command during a natural disaster. In the context of Covid-19, however, this organization has not been able to coordinate across ministerial portfolios (e.g., health, tourism, finance, education, and religion) or collaborate effectively with governors in thirty-four provinces. Coupled with its own lack of coordination and conflicting statements, the Jokowi administration's inability to leverage institutions and mechanism to deal with Covid-19 has undermined public confidence in its leadership.

## 6. Religion and Covid-19: The Biggest Dilemma

The Covid-19 pandemic has presented believers with a dilemma: either they “lock down” their prayers at home, or they view the pandemic as a challenge to their faith, refusing to maintain a “social distance” from God and continuing to participate in public rituals.<sup>52</sup> This situation arises broadly in Indonesia, home to more than 200 million believers from six official religions: Islam, Catholicism, Protestantism, Hinduism, Buddhism, and Confucianism. It is no surprise that these religions have responded in different and complex ways to the Covid-19 crisis.<sup>53</sup>

Consider the events of 18 March in Gowa, South Sulawesi. Thousands of Muslim pilgrims from across Asia gathered for a five-day event, *Ijtima* (Islamic congregation). The Indonesian government had asked the organizing body, the *Tablighi Jama'at*, a global movement of evangelical Muslims which promotes proselytizing (*dakwah*), to cancel the event, owing to the fears that such a large meeting could fuel the spread of the coronavirus. The next day, thousands also gathered on the Indonesian island of Flores at an ordination ceremony for a Catholic bishop, despite calls from authorities to avoid mass gatherings. Neither group heeded the government's calls. As a result, a cluster of infections arose in Gowa. Hundreds of confirmed Covid-19 cases involved those who attended the Gowa *Ijtima*. The administration of Central Java formed a team to track down approximately 1,500 residents who attended the mass religious gathering in Gowa following the emergence of a Covid-19 cluster in the Brebes Regency. The

<sup>51</sup> Presidential Decree No. 7 of 2020.

<sup>52</sup> This section is based on Nadirsyah Hosen, “When religion meets Covid-19 in Indonesia: more than a matter of conservatives and moderates,” *Indonesia at Melbourne*, 29 April 2020, <https://indonesiaatmelbourne.unimelb.edu.au/when-religion-meets-covid-19-in-indonesia-more-than-a-matter-of-conservatives-and-moderates/>.

<sup>53</sup> See Schonthal and Jayatilake, Chapter 18, this volume.

media reported that sixteen residents of Brebes, who had attended the *Ijtima* in Gowa, tested positive for Covid-19.<sup>54</sup> The damage had been done.

Some who believe that ritual is intended primarily to serve God will put public worship ahead of concerns over Covid-19. They challenge other believers with difficult questions: “Why are you afraid of the virus? You should be afraid of God.” They oppose government regulations that forbid them to organize mass prayers in mosques, churches, or temples. Others, however, believe God does not need our prayers—we are the ones who need God. There is room for interpretation and relaxation of some ritual requirements, because worship is not solely for the benefit of God but for people. These differences have led religious communities to respond differently to the pandemic.

Following Saudi Arabia's decision to close two holy mosques in Mecca and Medina, the *Salafi* group in Indonesia agreed to worship at home. Even the Islamic Defenders' Front (*Front Pembela Islam*, or FPI), notorious for demanding strict adherence to *shari'a* requirements, discouraged public gatherings long before the government PSBB were enacted in big cities in Indonesia, including Jakarta, on 23 April 2020. The three most prominent Islamic organizations in Indonesia, the Indonesian Council of Ulama (*Majelis Ulama Indonesia*, or MUI), *Nahdlatul Ulama*, and *Muhammadiyah*, have all now issued religious rulings (or *fatwas*), ordering followers, to some extent, to avoid mass gatherings at mosques.<sup>55</sup> However, many mosques in Aceh, West Sumatra, West Nusa Tenggara, West Java, and East Java are still holding regular Friday prayers as well as *tarawih* prayers (additional prayers performed at night during *Ramadan*).

Crucially, some religious leaders (*kiai* and *ustadz*) who argued for the right to organize and lead mass prayers belong to *Nahdlatul Ulama*, usually considered progressive in its stand against radicalism. These religious leaders argued that they already applied government protocols at the mosques by providing hand sanitizer and disinfectant, cleaning the walls and carpets, and asking people to stand at more than one metre apart during prayer. Was this enough? The government said no, because of the possibility of asymptomatic transmission in enclosed places where people gather. The crucial point was that the rituals and traditions involving mass gatherings are almost inseparable from *Ramadan*: *tarawih*, *tadarus* (reading of the *Qur'an*), *i'tikaf* (a period of remaining in the mosque), *pengajian* (Islamic study), *mudik* (returning to home villages), and shaking hands during *halal bi halal* (meetings to celebrate the end of *Ramadan*), all involve crowds of people.

<sup>54</sup> “COVID-19: Central Java tracking down 1,500 residents who attended Gowa gathering,” *The Jakarta Post*, 8 May 2020, <https://www.thejakartapost.com/news/2020/05/07/covid-19-central-java-tracking-down-1500-residents-who-attended-gowa-gathering.html>.

<sup>55</sup> Katharina R. Lestari, “Indonesian fatwa urges Eid prayers at home,” *UCA News*, 15 May 2020, <https://www.ucanews.com/news/indonesian-fatwa-urges-eid-prayers-at-home/88028>.

Some of these activities, such as *pengajian* and *tadarus*, can be conducted online. Others, such as *tarawih*, may be conducted at home, but many Muslims find this less than ideal. Some activities, however, can only be conducted in mosques, such as *i'tikaf*. This devotion is not compulsory, merely recommended, but under normal circumstances, mosques would have been full of people performing *i'tikaf* during the final ten days of *Ramadan*. The Jokowi administration was reluctant to impose strict prohibitions for people gathering at the places of worship during the pandemic. Prohibitions could trigger a political move by Islamist political parties, claiming that Muslims were the targets of such a policy. Although the rule would apply to all believers, not only Muslims, it is a delicate matter in the largest Muslim country in the world. At the same time, allowing Muslims to gather and pray at mosques would make the government's response to Covid-19 significantly more difficult. As with his decision on *mudik*, Jokowi had to tread carefully in responding to strict believers.

## 7. Conclusion

The Jokowi administration could have done much more to anticipate the impact of the Covid-19 crisis. It could have taken the issue seriously in January rather than waiting for two months to react. But other factors contributed to the insufficiency of the government's response. Political rivalry between the central government and the governor of Jakarta and long disputes between the IDI and the health minister, together with inadequate coordination, unclear policies and conflicting statements, and the reactions of strict believers, who insisted on ignoring the government's regulation on praying at home, have all led to a disastrous result. Jokowi's response was too little and too late—a hard lesson for his early second term as president.

# Malaysia: Improvised Pandemic Policies and Democratic Regression

*Azmil Tayeb\* and Por Heong Hong\*\**

## 1. Introduction

As a key node in an interconnected global community, Malaysia has not been spared from the Covid-19 pandemic. Countries around the world have taken strict measures to deal with this pandemic, namely, through mass testing, quarantine, and social distancing, though the extent to which these measures are carried out and enforced varies. Chief among Malaysia's measures to stem the spread of the pandemic is the Movement Control Order (MCO) imposed on 18 March, which forces people to stay inside except to perform essential services, go out to buy food, or seek medical treatment. As we shall see in this chapter, the MCO has been successful in some respects, particularly in flattening the curve, but in some areas, such as the rights of marginalized communities, clarity of instructions, and uniformity of enforcement, it has left much to be desired.

A discussion of Malaysia's response to the Covid-19 pandemic would not be complete without reference to the political upheaval that took place at the onset of the pandemic. Backroom dealings by several members of the former Coalition of Hope (*Pakatan Harapan*, or PH) government, which started on 23 February and lasted until 1 March, resulted in the dissolution of the PH government and ushered in a new government led by the National Alliance (*Perikatan Nasional*, or PN).<sup>1</sup> The first few cases of Covid-19 in Malaysia were detected on 24 January, mainly brought by travellers returning from China, so Malaysia's response to the

\* Senior Lecturer, School of Social Sciences, Universiti Sains Malaysia.

\*\* Lecturer, School of Social Sciences, Universiti Sains Malaysia (<https://orcid.org/0000-0001-8362-0202>).

<sup>1</sup> The PH coalition is ethnically diverse, while the PN coalition is predominantly Malay-Muslim, which sets them apart ideologically. Several members of the PH coalition defected to the PN coalition and left the PH government with no clear majority in the Parliament. The then prime minister, Mahathir Mohamad, abruptly resigned on 24 February, leaving a leadership vacuum that was swiftly filled by the PN coalition. After a protracted power struggle, Mahathir's former deputy, Muhyiddin Yassin, who also defected from the PH coalition, was sworn in as the new prime minister on 1 March.



Covid-19 crisis spans the terms in government of two rival political parties, with the current PN government assuming the bulk of the responsibilities.

The previous PH government had introduced basic measures, such as installing thermal scanners at airports and screening international visitors, especially those arriving from places significantly affected by Covid-19. On 24 January, three individuals tested positive for the virus, having been infected by someone who had just returned from China. The number of cases quickly climbed to twenty-two on 15 February as more Malaysians flew back from China. For reasons of economic pragmatism, the PH government resisted an outright ban on visitors from China despite a vociferous public campaign asking that it impose one.<sup>2</sup> After almost two weeks of dithering, by the end of January, the PH government finally decided to suspend visas of Chinese visitors from Wuhan, Hubei, and their neighboring provinces.<sup>3</sup> The wave of positive cases seemed to have plateaued in the following two and a half weeks, but the brief respite proved to be the calm before the storm. The second wave of cases swept across Malaysia beginning on 27 February, and it could not have come at a worse time, as the whole country's attention was fixated on the political drama that was unfolding in Putrajaya (Malaysia's federal administrative capital), with the PH government teetering on the brink of collapse. This chapter will therefore focus on the measures taken by the current PN government since it came to power on 1 March, when the Covid-19 crisis was at a crescendo.

We begin with an overview of the emergence of Covid-19 cases in Malaysia, in particular, the clusters that spike the infection rate. We then consider the regulations, laws, and socio-economic measures implemented by the Malaysian government. Finally, we evaluate the effectiveness of these measures and the challenges faced by the government and the people in coping with this crisis, not just in seeking to reduce the number of positive cases but also in the larger of context of democratic norms, human rights, and socio-economic justice.

## 2. Background on the Emergence of Covid-19 in Malaysia

By the end of February, just over a month since the first confirmed case on 24 January, the number of positive cases remained manageable at twenty-three.

<sup>2</sup> "Over 100,000 people petition to block Chinese nationals from entering Malaysia, following coronavirus outbreak," *Malay Mail*, 26 January 2020, <https://www.malaymail.com/news/malaysia/2020/01/26/over-100000-people-petition-to-block-chinese-nationals-from-entering-malays/1831531>.

<sup>3</sup> "Malaysia suspends visas for Chinese tourists from Wuhan and Hubei," *New Straits Times*, 27 January 2020, <https://www.nst.com.my/world/world/2020/01/560170/malaysia-suspends-visas-chinese-tourists-wuhan-and-hubei>.

Those infected were mainly returning travellers, who in turn were effectively quarantined and cared for. A false sense of security emerged as the country's attention shifted to the unfolding political drama. However, by mid-March, the number of positive cases rose exponentially into triple digits, catching almost everyone by surprise. It was apparent that the second wave of Covid-19 had just hit Malaysia, and the source was the so-called "Tabligh cluster."

Tablighi Jama'at is, in essence, a global Islamic missionary movement that comprises members who travel from one place to another to evangelize their faith.<sup>4</sup> From 27 February to 1 March, the Tabligh group held a mass gathering at a mosque in Sri Petaling on the outskirts of Kuala Lumpur attended by roughly 16,000 people, including an estimated 1,500 foreigners.<sup>5</sup> This mass gathering went unnoticed by the authorities, possibly because the government at the time was paralyzed by the political turmoil. Since it takes up to two weeks for the Covid-19 symptoms to appear, it was not until much later that the authorities realized that the mass gathering—the Tabligh cluster—was indeed ground zero for the second wave. On 18 March, the first day of the MCO, 673 cumulative cases were detected nationwide; 438 of those came from the Tabligh cluster.<sup>6</sup> The day before, on 17 March, Malaysia recorded its first two Covid-19 deaths, one an attendee at the Tabligh event at the Sri Petaling mosque.<sup>7</sup>

The government immediately tried to track people who attended the Sri Petaling gathering to test them for the virus and trace their contacts. Foreign attendees had long left the country, so the appeal was directed to those who remained in Malaysia. The Tablighis' response was mixed. Many did come forward for testing, while others resisted, fearing social stigma. Also among the attendees was also a sizeable number of undocumented migrants who feared getting arrested if they came forward for the test.<sup>8</sup> By 28 March, 5,084 attendees

<sup>4</sup> Farish Noor, "Constantly on the move," *The Star*, 22 March 2020, <https://www.thestar.com.my/news/focus/2020/03/22/constantly-on-the-move>.

<sup>5</sup> "HowmassgatheringatMalaysianmosquebecamecoronavirushotspot," *The Straits Times*, 18 March 2020, <https://www.straitstimes.com/asia/se-asia/how-mass-pilgrimage-at-malaysian-mosque-became-coronavirus-hotspot>.

<sup>6</sup> "Malaysia records first Covid-related deaths," *The Star*, 18 March 2020, <https://www.thestar.com.my/news/nation/2020/03/18/malaysia-records-first-covid-related-deaths>.

<sup>7</sup> Jerry Choong, "Health D-G: Over 20,000 from tabligh cluster tested, 70pc of them negative for Covid-19," *Malay Mail*, 7 April 2020, <https://www.malaymail.com/news/malaysia/2020/04/07/health-d-g-over-20000-from-tabligh-cluster-tested-70pc-of-them-negative-for/1854427>. The other fatality came from the Good News Fellowship church gathering in Kuching, Sarawak, which at the time of writing had claimed three lives. Nuradzimmah Daim and Meera Murugesan, "3 new cases from 3 Covid-19 clusters in Sarawak," *New Straits Times*, 30 April 2020, <https://www.nst.com.my/news/nation/2020/04/588805/3-new-cases-3-covid-19-clusters-sarawak>.

<sup>8</sup> Tharanya Arumugam, "Don't worry about being detained, just come forward for Covid-19 testing, please," *New Straits Times*, 22 March 2020, <https://www.nst.com.my/news/nation/2020/03/577004/dont-worry-about-being-detained-just-come-forward-covid-19-testing-please>. One and a half months later, the Malaysian government reneged on this promise and detained 586 undocumented migrants by using the Covid-19 crisis as a pretext: Kaamil Ahmed, "Malaysia cites Covid-19 for rounding up hundreds of migrants," *The Guardian*, 2 May 2020,

had still not come forward for testing.<sup>9</sup> Nonetheless, by the first week of April, most of the attendees and their close contacts relented and agreed to be tested.<sup>10</sup>

Since the Islamic resurgence in Malaysia in the late 1970s, expression of Islamic faith has become visibly prominent in public sphere, including within the government. The government has thus had to tread carefully during the pandemic when implementing measures that directly touch upon Islamic sensitivities. The government's response to the Tabligh cluster clearly illustrates this cautious approach. Instead of unleashing the coercive force of the state to round up the attendees, the government appealed to them to come forward voluntarily for testing lest it be accused of hostility to Islam. The government also deployed several prominent ulamas (Islamic scholars) to use Islamic injunctions to persuade the attendees to get tested, since many of the attendees believed that the Covid-19 pandemic was a test from God and were willing to die as martyrs.<sup>11</sup> The MCO also came under challenge initially for disrupting Muslims' needs to perform their rituals such as public prayers at mosque, and the government had to take extra care in trying to placate these religiously inspired doubters.<sup>12</sup>

Despite contributing around 40 per cent of all positive cases in the months immediately following the event, the Tabligh cluster was not the only vector of Covid-19 mass infections in Malaysia. The Malaysian Ministry of Health (MOH) identified twenty-five clusters and sub-clusters across the country, dividing them into those who attended the Tabligh event and their contacts, returning travellers, and migrant workers living in cramped spaces.<sup>13</sup> There were also numerous cases of front-line workers, such as doctors and nurses who tested positive after treating infected patients. In the tragic case of the "Italy cluster" in Kuching, one person who went on a holiday in Italy—but did not quarantine herself after coming back—infected her co-worker who, in turn, infected her family members. The result was a cluster of fifty cases and the tragic deaths of five

<https://www.theguardian.com/global-development/2020/may/02/malaysia-cites-covid-19-for-rounding-up-hundreds-of-migrants>.

<sup>9</sup> Annabelle Lee, "Health DG urges 5,084 from tabligh group to get tested for Covid-19," *Malaysiakini*, 28 March 2020, <https://www.malaysiakini.com/news/517400>.

<sup>10</sup> Jerry Choong, "Health D-G: Over 20,000 from tabligh cluster tested, 70pc of them negative for Covid-19," *Malay Mail*, 7 April 2020, <https://www.malaymail.com/news/malaysia/2020/04/07/health-d-g-over-20000-from-tabligh-cluster-tested-70pc-of-them-negative-for/1854427>.

<sup>11</sup> Noorazura Abdul Rahman, "[Covid-19: Perlis Mufti appeals to tabligh followers to undergo testing]," *Harian Metro*, 14 March 2020, <https://www.hmetro.com.my/mutakhir/2020/03/554489/covid-19-mufti-perlis-rayu-jemaah-tabligh-jalani-pemeriksaan> [title translated to English].

<sup>12</sup> Malik Muhamad, "[Covid-19: It is not a sin to miss Friday prayer for three consecutive times]," *Berita Harian*, 3 April 2020, <https://www.bharian.com.my/berita/wilayah/2020/04/672393/covid-19-tidak-berdosa-tinggal-solat-jumaat-tiga-kali-berturut-turut> [title translated to English]. See also Schonthal and Jayatilake, Chapter 18, this volume.

<sup>13</sup> Rashvinjeet S. Bedi and Joseph Kaos, "Covid-19: MOH identifies 25 clusters and sub-clusters, one linked to Bali travel history," *The Star*, 13 April 2020, <https://www.thestar.com.my/news/nation/2020/04/13/covid-19-moh-identifies-25-cluster-and-sub-clusters-one-linked-to-bali-travel-history>.

of her co-worker's family members.<sup>14</sup> The MOH has nevertheless persevered, identifying major clusters of positive cases and taking swift actions in limiting the spread of these clusters.

### 3. The Four Phases of the Movement Control Order

On 18 March, the government implemented the MCO, signalling a more serious approach to containing the pandemic. The MCO limits the movement of people outside of their places of residence and allows only essential services to operate. The legal basis of the MCO derives from two sources: first is Rule 3(1) of the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020; second is Section 269 of the Penal Code (negligent act likely to spread infection of any disease dangerous to life). The former allows the government to take all necessary steps to curb the spread of Covid-19 by establishing and revising the Standard Operating Procedures (SOP) according to the changing number of new positive cases and deaths.<sup>15</sup> The latter, meanwhile, empowers the government to punish those who violate the MCO, imposing fines of up to RM 1,000 (USD 232) and a maximum of six months' imprisonment. To date, the authorities have arrested more than 20,000 MCO violators, who were either fined or jailed.<sup>16</sup>

The MCO was initially carried out in four two-week phases between 18 March and 12 May. The government's aim was to set in motion a two-week MCO that could be extended for another two weeks depending on how the crisis unfolded, as measured by new cases and Covid-19-related deaths. The government has purposely declined to use the term "lockdown" so as not to induce panic among the population. Instead, it promotes the terms "partial lockdown" and "limited movement" to signal that while the situation is indeed dire, it still has not reached the total emergency level of a violent armed conflict or major natural disaster. Even so, some areas with higher numbers of cases were placed under an Enhanced Movement Control Order (EMCO), involving a total lockdown with

<sup>14</sup> Suhaniza Said, Clarissa Chung, and Sharon Ling, "Heartbreak for 'Italy cluster' family," *The Star*, 12 April 2020, <https://www.thestar.com.my/news/nation/2020/04/12/heartbreak-for-italy-cluster-family>.

<sup>15</sup> The SOP here refers to specific restrictions imposed on the public at large by the federal government such as freedom of movement, maintenance of food and medical supply, and permissible commercial activities, among others. The federal government loosens or tightens specific restrictions based on the changing situation on the ground.

<sup>16</sup> "Bar urges court to avoid 'travesty of justice' as more jailed for breaching MCO," *Free Malaysia Today*, 29 April 2020, <https://www.freemalaysiatoday.com/category/nation/2020/04/29/bar-urges-court-to-avoid-travesty-of-justice-as-more-jailed-for-breaching-mco/>.

all access roads blocked by the military and food supplied to all residents by the government.

Similar to measures taken in other countries, the MCO restrictions imposed upon the public rest on the principle of social distancing, known in Malay as *penjarakan sosial*. The MCO banned the public from conducting outdoor activities other than acquiring food supplies, and only heads of household were permitted to go out. Individual sports, such as jogging, cycling, and hiking, were not allowed even if people observed the one-metre social-distancing rule. Those employed in sectors providing essential services such as healthcare, supermarkets, food delivery, and mass media and in certain types of factories were allowed to work as long as their employers enforced strict safety procedures such as wearing face masks, limiting the number of customers inside the premises, carrying out temperature checks on every customer, and ensuring the one-metre social-distancing rule was respected in checkout lines, among others. The government also banned all mass gatherings, including communal prayers at mosques, churches, and temples, which initially caused consternation among some religious conservatives until religious leaders intervened.<sup>17</sup> In addition, the government mobilized the police to set up roadblocks and patrol units in urban areas to further ensure that the public complied with the MCO. Malaysians were forbidden from leaving the country; only foreigners were allowed to fly back to their respective home countries. All returning Malaysians were required to be quarantined upon arrival for two weeks. While the MCO compliance rate with these measures was high (99 per cent, according to the Inspector-General of Police), reports of more than 20,000 cases of MCO violations spoke to the overzealousness of their enforcement and the arbitrariness of the restrictions, all of which caused public misunderstanding and typically came at the expense of the less privileged.<sup>18</sup>

#### 4. Stimulus Package without Parliamentary Approval

The economic impact of the Covid-19 pandemic was already being felt after a significant decline in international travel, even before the MCO was imposed. On 27 February, the interim Prime Minister Mahathir announced a RM 20 billion stimulus package, mainly to assist the worst-hit industry—tourism—and its 40,000 workers.<sup>19</sup> As the MCO was put in place from mid-March, most

<sup>17</sup> Muhamad, “[Friday prayer].”

<sup>18</sup> “MCO compliance rate now at 99pc, says IGP,” *Malay Mail*, 4 April 2020, <https://www.malaymail.com/news/malaysia/2020/04/04/mco-compliance-rate-now-at-99pc-says-igp/1853384>.

<sup>19</sup> “2020 Economic Stimulus Package: PM’s full speech,” *The Edge*, 27 Feb 2020, <https://www.theedgemarkets.com/article/bolstering-confidence-stimulating-growth-protecting-jobs>.

economic activities, except essential works, were temporarily frozen for seven to eight weeks, widening and deepening the economic crisis. In the first phase of the “partial” lockdown, the new PN government, seeking to boost private consumption, announced an i-Lestari Withdrawal Scheme, allowing members of the Employees Provident Fund (EPF) below the age of fifty-five to withdraw up to RM 500 each month for one year from 1 April 2020.<sup>20</sup> The scheme received mixed responses. While some workers hailed the measure for easing their burden, others cautioned, to no avail, that the measure would deplete workers’ savings for their old age.

As the pandemic laid bare the flaws of the existing pro-market globalized economic system, it paradoxically called for government to extend urgent and multiple forms of public assistance to individual citizens, even as national economies shrank dramatically and public debt skyrocketed. To further soften the economic impact, on 27 March, the government injected an additional RM 250 billion (representing 17.6 per cent of the country’s GDP) into the Prihatin Economic Stimulus Package, providing a cash payment to affected individual wage labours and households. It later released a third stimulus package for small and medium-sized enterprises on 6 April.<sup>21</sup> Whether these measures were enough to mitigate the adverse economic impact will be debated for years to come, but in the short term, they appear to have saved the government from the political consequences of economic collapse by helping citizens to overcome hardship. For some, the economic package might come across as, in John Keane’s words, “overnight socialism.”<sup>22</sup> Yet, its presentation as an “economic stimulus package,” rather than “aid package” or “social security net,” offers a counter-narrative. Whether this crisis will qualitatively transform the pre-pandemic development model premised on economic growth to one centred on welfare is also yet to be observed.

However desirable these measures are perceived to be, they have been imposed without due process. The i-Lestari scheme as well as the second and the third aid packages all lack parliamentary mandate and transparency. While external crises often require a unified and non-partisan response, from its inception, the MCO was overshadowed by narrow partisan politicking as the chiefs of five pro-PH states were excluded from a meeting on the MCO and Covid-19 initiated by the

<sup>20</sup> The EPF is a federal statutory body that manages the mandatory saving scheme and retirement fund of Malaysian workers in the private sector. Regarding the i-Lestari scheme, see “Covid-19: Applications for EPF withdrawal open from April 1 onwards,” *The Star*, 23 March 2020, <https://www.thestar.com.my/news/nation/2020/03/23/epf-withdrawal-through-i-lestari-account-2-from-april-1-says-epf-chief>.

<sup>21</sup> “Malaysia is set for bigger-than-usual rate cut,” *The Edge*, 5 May 2020, <https://www.theedgemarkets.com/article/malaysia-set-biggerthanusual-rate-cut>.

<sup>22</sup> John Keane, “Democracy and the Great Pestilence,” Institut für die Wissenschaften vom Menschen, 10 April 2020, <https://www.iwm.at/closedbutactive/corona-focus/john-keanedemocracy-and-the-great-pestilence/>.

PN-led federal government.<sup>23</sup> In the interest of maintaining democratic governance during the pandemic, some nongovernmental organizations (NGOs) and the federal opposition coalition urged the government to convene virtual parliamentary sitting and debates, but their proposals went completely unheeded. On the contrary, the PN government decided to limit the parliamentary sitting in May to one day (18 May 2020).<sup>24</sup> Social scientists in Southeast Asia have warned that some governments are likely to take political advantage of the health crisis to extend their authoritarian reach.<sup>25</sup> In Malaysia, the PN government appears to have taken the crisis as an opportunity to build its legitimacy and portray itself as a benevolent authoritarian government by releasing a series of cash payment packages; it also used the outbreak as an unspoken excuse to avoid parliamentary checks and balances. Far from suspending politics, the pestilence has, in David Runciman's words, "revealed the nature of power,"<sup>26</sup> as it did in many parts of the world.

## 5. Emergency Powers

The current state of emergency should not, however, be conflated with an extralegal Agambenian "state of exception," even though the PN's refusal to convene Parliament does indeed indicate a trend of democratic regression.<sup>27</sup> Citizens' consent to a temporary state of emergency to minimize the threat of

<sup>23</sup> "Oversight led to opposition state CMs, MBs being left out of Covid-19 meeting," *New Straits Times*, 17 March 2020, <https://www.nst.com.my/news/nation/2020/03/575542/oversight-led-opposition-state-cms-mbs-being-left-out-covid-19-meeting>. The Covid-19 crisis also soured federal-state relations when nine states refused to obey the federal government's order to loosen the MCO restrictions, especially in the economic sector following the conclusion of the third phase of the MCO. The escalating tension got to the point where the federal government threatened to sue the non-complying states. "No conditional MCO for nine states," *The Star*, 4 May 2020, <https://www.thestar.com.my/news/nation/2020/05/04/no-conditional-mco-for-nine-states>.

<sup>24</sup> "Parliament sitting is not only possible but imperative to uphold parliamentary democracy – Bersih 2.0 Steering Committee," *Malay Mail*, 6 May 2020, <https://www.malaymail.com/news/what-you-think/2020/05/06/parliament-sitting-is-not-only-possible-but-imperative-to-uphold-parliament/1863557>.

<sup>25</sup> James Gomez and Robin Ramcharan, "Coronavirus and Democracy in Southeast Asia," *Bangkok Post*, 1 April 2020, <https://www.bangkokpost.com/opinion/opinion/1890655/coronavirus-and-democracy-in-southeast-asia?>

<sup>26</sup> David Runciman, "Coronavirus has not suspended politics – it has revealed the nature of power," *The Guardian*, 27 March 2020, <https://www.theguardian.com/commentisfree/2020/mar/27/coronavirus-politics-lockdown-hobbes>.

<sup>27</sup> In late February, Italian political philosopher Giorgio Agamben called out his government's lockdown policy as imposing a state of emergency or state of exception, whereby the executive of a sovereign state expands its power into the legislative and suspend the constitution in the name of protecting the people. He even criticized his countrymen for giving up their social and public life for their biological survival. His view has since been widely refuted in the European intellectual circle. For a comprehensive discussion of "state of exception," refer to Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005).

the outbreak is not equivalent to supporting a decades-long restriction of liberty. People who agree with the implementation of the MCO might not necessarily welcome the delay and suspension of parliamentary sittings nor any forms of heavy-handedness, such as the deployment of armed military in the worst-hit EMCO areas or the criminalization of non-compliant citizens. Yet, the invocation of emergency-like power signals the need for precaution against the likely eventuality that the PN will take advantage of this health crisis to expand and concentrate executive power beyond the crisis as the National Front (the predecessor of the PN) did during the racial riot in 1969.<sup>28</sup> Precaution aside, beginning in May, the MCO has entered a fifth phase, characterized by a gradual relaxation of restrictions.

But even as it eases restrictions, challenges remain. Malaysia's English-language newspaper reported the harassing of a *South China Morning Post* (Hong Kong-based) journalist for reporting on the mass arrest of over 500 undocumented migrant workers in virus-hit areas, another sign of authoritarian resurgence.<sup>29</sup> And while individual citizens might have been provided temporary economic relief, the longer the crisis, the more susceptible the government is to democratic backlash. According to an online survey conducted by the Department of Statistics Malaysia (DOSM), from 10 April to 24 April, 97 per cent of the 41,384 respondents said they had benefitted from the stimulus package, and 70 per cent felt the package was effective.<sup>30</sup> How far people's satisfaction with the stimulus package directly translates into support for the PN government remains to be seen, potentially at the fifteenth general election in 2023.

## 6. Migrants, Refugees, and Xenophobia

Closely related to the economic impact are questions regarding the mass screening of migrant workers for the resumption of work and businesses. Malaysia's economy has long run on a massive, "disposable" precarious migrant workforce with a high turnover rate.<sup>31</sup> Nonetheless, the migrant workforce was largely "socially invisible" before the pandemic, despite its sizeable population. The increasing social visibility of migrant workers can be attributed to both the

<sup>28</sup> See Ramraj and Thiruvengadam, Chapter 9, this volume.

<sup>29</sup> "Cops probing South China Morning Post reporter over migrant raid article," *New Straits Times*, 3 May 2020, <https://www.nst.com.my/news/nation/2020/05/589549/cops-probing-south-china-morning-post-reporter-over-migrant-raid-article>.

<sup>30</sup> "Most Malaysians received three types of stimulus funding," *The Edge*, 6 May 2020, <https://www.theedgemarkets.com/article/most-malaysians-received-three-types-stimulus-funding-%E2%80%94-dosm>.

<sup>31</sup> Lee Hwok Aun and Khor Yu Ling, "Counting Migrant Workers in Malaysia: A Needlessly Persisting Conundrum," *ISEAS Perspective* 2018, no. 25: 1–11.



non-discriminatory nature of Covid-19 as a deadly virus and the heightened fear of the public and their tendency to scapegoat “others” for potentially carrying the virus. That only migrant workers, and not local workers, were highlighted as a target for mass screening indeed indicates discrimination. The fear of infection is justified, but that of migrant workers is not. Unfortunately, the mass raid on undocumented workers on 1 May 2020 and the detection of a cluster of twenty-seven infected South Asian guest workers at a construction site in Ampang a day later have further enhanced the visibility of this precarious community and reinforced the pre-existing prejudices that migrant bodies are dirty and pathogenic.

Even though testing has been a useful instrument for detecting positive cases and controlling the outbreak, the mass screening of 2.3 million imported workers is a challenge.<sup>32</sup> The difficulty of this endeavour raises several questions: Who should foot the bill for mass testing? Is it even necessary? Does the lab infrastructure have sufficient capacity? It was the PN government that first proposed to screen migrant workers and urged employers to pay expenses at a cost of around RM 350–650 per PCR swab test. Employers have resisted on the grounds that it is beyond their pandemic-strained financial capacity and have urged the government to instead look into cheaper alternatives to rapid test kits.<sup>33</sup> In turn, the government sought to shift the cost onto individual migrants, asking employers to make monthly deductions from the workers’ salaries for the screening fee.<sup>34</sup> No migrant workers were consulted, remaining highly visible yet muted in this crisis. In the hope of breaking the impasse, the Malaysian Medical Association (MMA) later weighed in and counter-proposed that it is more practical and affordable to ensure workers’ welfare and improve their living conditions, rather than testing them *en masse*, as the labs might not be able to cope with a drastic increase in demand. More importantly, mass screening would be futile and a waste of resources if resumed businesses do not even observe proper preventive and precautionary measures.<sup>35</sup> The MMA’s suggestion is consistent with comparable practices in many countries, such as South Korea and Taiwan, which apply only targeted testing and have been able to control the outbreak without a lockdown.

<sup>32</sup> In response to NGO claims that Malaysia has 6.7 million migrant workers, of which 4 million are undocumented, DOSM clarified that the foreign workforce stands at 2.3 million, without indicating whether undocumented workers are included in its calculation. See “Viral news on foreign workers statistics false – Dept of Statistics,” *Malaysiakini*, 27 April 2020, <https://www.malaysiakini.com/news/522862>.

<sup>33</sup> “Gov’t urged to bear Covid-19 screening cost for construction industry,” *Malaysiakini*, 6 May 2020, <https://www.malaysiakini.com/news/524447>.

<sup>34</sup> “Ismail suggests monthly salary deduction to pay for Covid-19 tests,” *Malaysiakini*, 7 May 2020, <https://www.malaysiakini.com/news/524568>.

<sup>35</sup> “Ensure foreign workers’ welfare rather than testing them *en masse*, doctors tell Putrajaya,” *Malay Mail*, 5 May 2020, <https://www.malaymail.com/news/malaysia/2020/05/05/ensure-foreign-workers-welfare-rather-than-testing-them-en-masse-doctors-te/1863390>.

Pervasive xenophobia aimed at migrant workers is lamentably an ugly by-product of the pandemic in Malaysia.<sup>36</sup> It is also reflected in the mistreatment of Rohingya refugees, who became the object of the hateful vitriol of many Malaysians, including leading politicians. The xenophobic climate worsened on 16 April when the Malaysian navy intercepted a boat filled with some 200 Rohingya refugees and turned it back out to the open seas. The incident sparked a heated public debate over whether Malaysia should use its resources during this crisis only to help Malaysians and let foreigners, in this case refugees, to fend for themselves. Soon after this incident, a letter directed to the Malaysian minister of human resources written by a self-styled Rohingya leader in Malaysia surfaced in which he allegedly demanded full citizenship from the Malaysian government for all Rohingya refugees. A Facebook user using the pseudonym “Jebat” (a tragic hero figure from Malay folklore) uploaded the letter, which then went viral. In truth, the content of the letter entailed the plights of Rohingya refugees in Malaysia and what the government can do to help—there was no demand of full citizenship.<sup>37</sup> The misconstrued letter was swiftly taken off Facebook but not before it managed to exacerbate the toxic sentiment against the Rohingya refugees—so much so that the uploader received death threats.<sup>38</sup> It is unfortunate that despite the threat of a crisis that brings people together as a cohesive community in facing this enormous challenge, the collective goodwill of many Malaysians seems to stop at the country’s borders and does not extend to those who are deemed “different.”

## 7. Community’s Responses and Mutual Help

Despite the xenophobia, Malaysians are coming together to help one another. From the very beginning of the MCO, volunteers from across the country took the initiative to form various online self-help and mutual-help platforms, such as #KitaJagaKita (“we look out for one another”) and Care Mongering. Taking

<sup>36</sup> Aslam Abd Jalil, “Malaysian Malaysia: The Rise of Xenophobia,” *Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia (SHAPE-SEA)*, 4 May 2020, <https://shapesea.com/op-ed/malaysian-malaysia-the-rise-of-xenophobia/>.

<sup>37</sup> For more details on the discredited letter and other disabused claims of the anti-Rohingya hate campaign, see Badd, “Did Rohingya Refugees Actually Ask For Malaysian Citizenship? We Check This and Other Claims,” *Cilisos*, 2 May 2020, <https://cilisos.my/did-rohingya-refugees-actually-ask-for-malaysian-citizenship-we-check-this-and-other-claims/>. Right after the letter was posted on Facebook, a video emerged in which the same Rohingya leader was falsely depicted in a misleading subtitle as demanding Malaysian national ID and the right to marry Malay women, among others. Jalil, “Malaysian Malaysia.”

<sup>38</sup> “Rohingya spokesman lives in fear after fake news on citizenship sparks death threats,” *Free Malaysia Today*, 24 April 2020, <https://www.freemalaysiatoday.com/category/nation/2020/04/24/rohingya-spokesman-lives-in-fear-after-fake-news-on-citizenship-sparks-death-threats/>.

advantage of communication technology, these volunteers pulled together various pools of talent and different forms of initiative, including donation collection and aid distribution. Meanwhile, pre-existing groups of volunteers, who were already active in distributing aid and food for the homeless and urban poor before the pandemic, continued to care for the marginalized and forgotten population even during the MCO. However, they soon found their work temporarily disrupted by the Welfare Department of the Ministry of Women, Family and Community Development (MWFCDD), pending the formulation of a safety protocol for distributing aid.<sup>39</sup> Unambiguous precautionary measures are fundamental for protecting both volunteers and aid receivers, yet they were not issued until the end of the first phase of the MCO.


The weakness of the MWFCDD goes beyond its slow response to assisting the urban poor. It was as undirected regarding its own role in handling domestic violence and child abuse during the lockdown.<sup>40</sup> Talian Kasih, a MWFCDD-managed hotline for domestic violence and child abuse, was unexpectedly suspended on the very first day of the MCO, resuming only after a wave of strong criticism.<sup>41</sup> The reputation of the MWFCDD was further tarnished when it posted several visual guidelines to its official Facebook page reminding women to wear make-up while working from home and suggesting they might maintain household happiness by imitating Doraemon, a Japanese cartoon character, when persuading their husbands to do something, rather than nagging. These sexist posts immediately drew another wave of criticism and mocking.<sup>42</sup> Collectively, these events indicate the Ministry's ineptitude in helping the needy and marginalized and its disconnection from substantive issues and NGO activities on the ground. Worse, it reveals its own sexism as a government department. Despite an underperforming MWFCDD, NGOs, such as Women's Aid Organization, continue to offer their help to victims of domestic violence during lockdown, even after the resumption of Talian Kasih. Concerned Malaysians began organizing on social media in support of domestic abuse survivors by creating and sharing a "symbol for domestic violence" to encourage people who encounter domestic abuses to seek help.

<sup>39</sup> "Now, Putrajaya says welfare groups may resume sending aid with supervision," *Malay Mail*, 1 April 2020, <https://www.malaymail.com/news/malaysia/2020/04/01/now-putrajaya-says-welfare-groups-may-resume-sending-aid-with-supervision/1852520?>.

<sup>40</sup> Yeong Pey Jung, "Domestic Violence and the Safety of Women during the Covid-19 Pandemic," Penang Institute Crisis Assessment, 25 April 2020, <https://penanginstitute.org/wp-content/uploads/2020/04/Domestic-Violence-Covid-19-1.pdf>.

<sup>41</sup> "Minister Rina Harun lifts Talian Kasih hotline suspension after bipartisan criticism," *Malay Mail*, 18 March 2020, <https://www.malaymail.com/news/malaysia/2020/03/18/minister-rina-harun-lifts-talian-kasih-hotline-suspension-after-bipartisan/1847826>.

<sup>42</sup> "Women are not Doraemon: Malaysians blast Ministry's sexist posters on social media," *The Star*, 1 April 2020, <https://www.thestar.com.my/lifestyle/living/2020/04/01/women-are-not-doraemon-malaysians-blast-ministry039s-sexist-posters-on-social-media>.



# Menemoh Covid-19 kay?

Covid-19 [Sampar] kay penyakit virus me bahaya la lac ratak hak memejek duniak. Covid-19 bejangkit tom hak mui semaq tit mui semaq mengkak de batuk, bersim, kenak dak liyur, tom en ahom semaq rong meh he tetelong [bendak/semaq].

## Hukum Boi Pertanang

Tengka nok-nok, seberuh hak Malaysia lac kelec Perintah Kawalan Pergerakan (18.3.2020-28.4.2020) la dak berlen penyakit [sampar] nok ratak. Kah kay cek, seberuh semaq kenak po'ot hak kampung. Boi keluar! Yak ho dak dak mande meh he len bekerjak macam memotong, bedo'oh rom masuk bri. Boi loh tit bandar meh he dak penting nyok. Semaq luar pon dak sut masuk hak kampung hea masa perintah kawalan nok-nok.

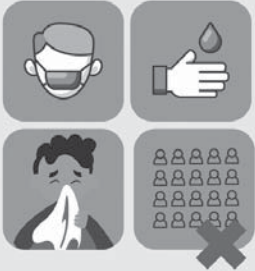


**ENYIH GENENGLANG**  
**TEROK**  
**BATOK**  
**SESAQ AMHOM**

## Mengkak enyih kenak covid-19 [sampar], tanda-tanda ho:

Mengkak dak tanda-tanda hak kay eluch tom G tecengroh rom semak me enyih la kenak Covid-19 [sampar], rom mengkak he G poh tegok-tegok, loh cek jeres tit klinik. Parlep kebek G tom semaq me ramai la dawen G boi gung penyakit kay hak semaq me enboh.

## Boi Ma Rangkit Covid-19 [Sampar]



1. Boi bekompl beramai-ramai (misal ho bartal tangpel semak, boi bejamuk, rom boi bejoget)
2. Senaklik cucik thi rom dak, cucik nya rom sabun.
3. Pekap molot mengkak bersim rom batuk. Sesedarik cucik thi eluc tom bersim/batuk.
4. Boi tahtoh barang hon.
5. Mengkak iyut tom hak tempat enboh [bandar], ceng hum rom cucik bajuk

Nota: Menurut kepercayaan Semelai, Covid-19 adalah termasuk dalam kategori [penyakit] 'sampar'

Poster Bahasa Semelai diterjemahkan oleh Zanisah Man dan Jahira Alias (Kampung Bukit Rok) serta Mu-Saffira Yusry (Kampung Pos Iskandar)

Figure 1: A poster with information on Covid-19 and preventive guidelines in the Semelai language, one of the many aboriginal languages in Malaysia. Designed by Ezrena Marwan.

Community care is also extended to the Orang Asli (“Indigenous people”) community that is deeply impacted by the Covid-19 crisis.<sup>43</sup> University of Malaya–based lecturer and activist Rusalina Idrus mobilized her network to design posters on preventive guidelines in different aboriginal languages for dissemination (Figure 1). Other activists posted photos and information about Orang Asli in various villages putting up their own checkpoints to guard against Covid-19. Individual activists collected and distributed aid for the aboriginal people in different remote areas. Evidence of these activities is easily accessible on social media, even though they went unreported by the media. It shows that this pandemic sparks community spirit as much as it restricts people’s mobility.

## 8. Conclusion

Caught by the pandemic in the midst of an unfolding political drama, the Malaysian government has been slow to coordinate a clear, government-wide response. Many of its policies have therefore been improvised, with the MWFDC and the immigration authorities responding almost haphazardly to the virus and espousing both sexism and xenophobia. Where the government has failed, however, communities have come together to provide care and assistance to vulnerable communities. However the next few months unfold in relation to the pandemic, the government’s response gives rise to deeper and longer-term concerns about the invocation and abuse of emergency-like powers, coupled with the prospect of democratic backsliding. Malaysia has already seen one discrete emergency, in 1969, transform into a decades-long concentration of unchecked executive power. The pandemic raises the prospect of a renewed and worrying shift in power.

<sup>43</sup> “Many Orang Asli missing out on Prihatin aid, says Suhakam,” *Free Malaysia Today*, 1 May 2020, <https://www.freemalaysiatoday.com/category/nation/2020/05/01/many-orang-asli-missing-out-on-prihatin-aid-says-suhakam/>.

# Myanmar: Pandemic in a Time of Transition

*Kai Ostwald\* and Tun Myint\*\**

## 1. Introduction

Myanmar confirmed its first cases of Covid-19 on 23 March 2020. While this made it among the last countries in Asia to be officially affected, it faced distinct disadvantages in its ability to respond to the pandemic relative to regional neighbours. This is due to its continued grappling with simultaneous political, economic, and conflict-related transitions: Myanmar was a largely closed-off military dictatorship for nearly fifty years prior to its partial opening in 2011.<sup>1</sup>

This period of self-isolation shaped the country in ways that directly impacted its vulnerability to the pandemic and its response. While economic liberalization has contributed to high growth rates in recent years, Myanmar remains among the world's poorest countries, with roughly a quarter of the population living at or below the poverty line.<sup>2</sup> Military dictatorship precipitated considerable institutional decay, reducing the capacity of the public sector to provide critical services and support coordinated responses to emerging crises. Inadequate resources for the public sector compound its challenges.<sup>3</sup> The period of repressive rule left Myanmar with low levels of generalized trust,<sup>4</sup> reducing the potential efficacy of public health communications and coordination. Furthermore, the governing 2008

\* Assistant Professor, Department of Political Science and School of Public Policy & Global Affairs, University of British Columbia.

\*\* Consulting Epidemiologist, Vancouver, Canada. We thank the International Development Research Centre (IDRC) *Knowledge for Democracy Myanmar* (K4DM) Initiative for enabling our work and research in Myanmar.

<sup>1</sup> Kyaw Yin Hlaing, "Understanding Recent Political Changes in Myanmar", *Contemporary Southeast Asia* 34, no. 2 (August 2012): 197–216.

<sup>2</sup> Ministry of Planning and Finance, UNDP, and World Bank, *Myanmar Living Conditions 2017: Report no. 3: Poverty Report* (Nay Pyi Taw: Ministry of Planning and Finance, UNDP, and World Bank, 2019).

<sup>3</sup> UNICEF, *Snapshot of Social Sector Budget Allocations and Spending in Myanmar* (Yangon: UNICEF Social Policy, Monitoring and Evaluation Section, 2013).

<sup>4</sup> Bridget Welsh and Kai-Ping Huang, *Myanmar's Political Aspirations & Perceptions 2015: Asian Barometer Survey Report* (Selangor: Strategic Information and Research Development Centre, 2016).

Constitution<sup>5</sup> complicates governance, as it entrenches a de facto power-sharing arrangement<sup>6</sup> in which control of the state and its ministries is divided between the civilian government and the military, hindering intra-governmental coordination. Lastly, ethnic conflicts, some of whose origins stretch back to the late 1940s, continue to affect large portions of the country's periphery, limiting the formal state's reach into outlying areas and creating substantial populations of internally displaced persons (IDPs).<sup>7</sup>

In conjunction with structural factors, the triple transition had several important implications for Myanmar's response to the pandemic. First, many of the aggressive approaches to countering Covid-19 that were effective in other contexts were infeasible for Myanmar, as the state lacked the capacity to enforce comprehensive population movement controls and large-scale testing and contact tracing.<sup>8</sup> In addition, few households have the financial reserves to withstand the economic shock of protracted closures, and the state lacked the resources to provide adequate compensation. With a pivotal election due in late 2020, the civilian leadership was particularly sensitive about imposing severe economic hardship that might erode its popular support. These fundamental constraints resulted in Myanmar taking a pragmatic approach that fell short of the aggressive, full mobilization seen in some countries.

Second, Myanmar's structural conditions prevented a uniform response to the pandemic. The simplest distinction to make is between three broadly conceived parts of the country: the relatively developed urban areas; rural areas under full state control; and conflict-prone peripheral areas in which the state has limited or no control. The capacity of the public health system is strongest in urban areas and drops considerably in rural areas. In peripheral areas, healthcare is typically provided informally by non-state-supported actors, and infrastructure and resources are generally lacking. The substantial variance in capacities across these areas prevents a uniform policy response and necessitates extensive improvisation by lower-level officials.

Third, Myanmar has several high-risk subgroups that complicated responses to the pandemic. Poor economic prospects for segments of the population make Myanmar one of the primary suppliers of migrant labour in Southeast Asia, estimated to be in the vicinity of 3 million in Thailand and Malaysia alone.<sup>9</sup> The

<sup>5</sup> Melissa Crouch, *The Constitution of Myanmar: A Contextual Analysis* (Oxford: Hart Publishing, 2019).

<sup>6</sup> Kai Ostwald and Paul Schuler, "Myanmar's Landmark Election: Unresolved Questions," *ISEAS Perspective*, 2015, no. 68 (2015).

<sup>7</sup> Kim Jolliffe, "Peace and Reconciliation" in Adam Simpson, Nicholas Farrelly, and Ian Holliday eds., *Routledge Handbook of Contemporary Myanmar* (Oxon: Routledge, 2018).

<sup>8</sup> Kyaw San Wai, "Myanmar and COVID-19," *The Diplomat*, 1 May 2020, <https://thediplomat.com/2020/05/myanmar-and-covid-19/>.

<sup>9</sup> See International Labour Organization report at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms\\_735107.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_735107.pdf).

slowing of economic activity and tightening of population control measures across the region compelled many labourers to return to Myanmar, often across porous land borders where screening measures were insufficient or entirely absent. Given the prevalence of Covid-19 in host countries, this returnee population posed a considerable risk for importing cases. While a secondary concern, the sharp concomitant reduction in remittances exacerbated both public and private financial strain. In addition, the country's ongoing conflicts have produced an IDP population estimated at nearly half a million.<sup>10</sup> Many are crowded into high-density camps with insufficient space or infrastructure to prevent the rapid spread of Covid-19 if introduced.<sup>11</sup> Overcrowded prisons, at 139 per cent of official capacity in 2018, pose similar risks.<sup>12</sup>

## 2. Arrival of Covid-19 in Myanmar and General Preparedness

Myanmar has struggled with infectious diseases for much of its modern history. It has one of Asia's highest adult HIV prevalence rates and still has regular, albeit small-scale, outbreaks of diseases like measles, polio, and tuberculosis. The World Health Organization (WHO) classifies Myanmar as a "crisis country" despite significant reforms to the healthcare system begun in 2011 and accelerated following the election of the civilian National League for Democracy (NLD) in 2015.

Several key indicators are revealing.<sup>13</sup> The ratio of medical doctors to population is around 1 to 1,500, well short of the WHO recommended minimum of 1 to 1,000. The shortfall is especially pronounced in rural areas, where the ratio is approximately 1 to 3,500. Nearly all of the country's thirty-eight tertiary hospitals are located in the relatively developed areas of Yangon, Mandalay, and Naypyidaw, though there is at least one meso-level hospital with between 200 and 500 beds in each region and state. There are estimated to be only around 600 critical care beds across the country, again concentrated in the urban areas.

<sup>10</sup> According to the Internal Displacement Monitoring Centre (IDMC), Myanmar had approximately 480,000 IDPs in April 2020. See <https://www.internal-displacement.org>.

<sup>11</sup> See "Myanmar: Displacement Camps Are COVID-19 Tinderboxes," *Human Rights Watch*, 30 March 2020, <https://www.hrw.org/news/2020/03/30/myanmar-displacement-camps-are-covid-19-tinderboxes>.

<sup>12</sup> For details, see <https://www.prisonstudies.org/country/myanmar-formerly-burma>. Note that Myanmar released nearly 20 per cent of its prison population in April 2020 in a bid to reduce transmission risks.

<sup>13</sup> Yu Mon Saw et al., "Myanmar's human resources for health: current situation and its challenges," *Heliyon* 5, no. 3 (March 2019).



As alarm grew over the emerging health crisis in Wuhan, China, in early 2020, Myanmar's Ministry of Health and Sports (MOHS) took initial steps to prepare for the potential introduction of the SARS-CoV-2 virus. This included plans to monitor points of entry, communicate risks to travellers, and institute isolation and quarantine policies for arrivals from abroad. The MOHS declared Covid-19 a notifiable disease on 28 February, significantly expanding the state's powers to respond to it. In mid-March, the national-level government formed a central committee, led by the de facto head of the civilian government Aung San Suu Kyi, to coordinate responses. Aung San Suu Kyi also began daily messaging on the widely used Facebook platform to raise awareness of prevention, control, and treatment measures. An additional emergency task force that included civilian and military ministries was formed to help coordinate the state's efforts in late March. As in many other countries, however, the early phases of preparation were marked by substantial inconsistencies. In a now notorious early-March press conference, the chief government spokesperson appeared to downplay the risk of Covid-19 for Myanmar, stating that the country's diet and lifestyle (including the usage of cash rather than credit cards) would inhibit human-to-human transmission.<sup>14</sup>

Serious limits to testing capacity were immediately evident. Myanmar initially relied on a Thailand-based laboratory to conduct tests, before the first domestic lab was equipped for Covid-19 testing in late February and a second by early April. In conjunction with personnel and new equipment brought in from abroad, domestic testing capacity was brought to approximately 142 tests per million population by late April, but this was still significantly below international standards: at the same point in time, the corresponding rate was 834 per million in Thailand; 4,942 per million in Malaysia; 20,175 per million in Canada, and 25,644 per million in Singapore.<sup>15</sup>

Myanmar confirmed its first two cases of Covid-19 only on 23 March, weeks later than neighbouring countries. Given the frequency of direct flights to Wuhan and other Covid-19 hotspots through mid-March, as well as the porous land borders with China and Thailand that thousands of returning migrant labourers would have crossed, it is very possible that undetected cases arrived earlier. The first wave of known infections was limited to returnees from abroad and their close contacts, though a high-profile cluster around a controversial Christian preacher in Yangon who defied measures against mass gatherings demonstrated the risk of local transmissions. By late April, when neighbouring Thailand and

<sup>14</sup> Myanmar Ministry of Information Press Conference, <https://www.moi.gov.mm/moi:eng/?q=news/14/03/2020/id-21137>.

<sup>15</sup> Based on calculations from Johns Hopkins University data, as of 29 April 2020. See <https://coronavirus.jhu.edu/map.html>.

Malaysia reported approximately 10,000 cases combined, Myanmar's count was still only 150. Of those, 116 were in the Yangon region, where, perhaps not coincidentally, testing capacity is greatest. With only some 7,500 tests conducted, however, it was widely assumed that the actual incidence, particularly in border areas, could be higher.

### 3. Legal and Regulatory Responses<sup>16</sup>

Initial legal and regulatory responses were focused on stemming the importation of the coronavirus, beginning with directives toward air travellers entering Myanmar from abroad. In early January, infrared digital thermometers were installed in Yangon, Mandalay, and Naypyidaw international airports. Airport-based health staff were instructed to monitor passengers for Covid-19-associated symptoms, with symptomatic passengers sent to designated hospitals for further monitoring and treatment. Testing limitations, however, left their official Covid-19 status ambiguous.

By mid-March, officials announced mandatory two-week quarantines for travellers entering the country by air from eight countries with large Covid-19 case counts. This measure was soon extended to all air arrivals from abroad. A temporary suspension of entry visas for foreign nationals was also announced, though diplomats and UN officials were exempt. In mid-April, a two-week ban on international commercial flights was announced, though it was quickly extended to the end of May, effectively preventing entry by air.<sup>17</sup>

As economic activity across Asia began to slow substantially in early March and tighter labour controls were imposed, many migrant workers were compelled to repatriate. This affected Myanmar's large migrant worker population in neighbouring Thailand, Malaysia, and China, triggering an exodus across land borders in late March. Given the extent of the Covid-19 outbreak in those countries, border officials attempted to mitigate the risk of importing cases. As with air arrivals, officials planned to monitor for Covid-19 symptoms and isolate affected individuals. Records of destinations were to be taken to facilitate contact tracing if needed. Gates were to be intermittently closed to moderate the flow of returnees. The border crossings, however, were rapidly overwhelmed by

<sup>16</sup> The narrative of Myanmar's response to Covid-19 is based on a range of sources from official communications to online posting and private discussions with Myanmar-based health-care professionals and citizens. The ambiguous nature of many directives, coupled with the improvised approach to implementation in many cases, makes a straightforward documentation of announcements insufficient to capture the full spectrum of the response.

<sup>17</sup> "COVID-19 Alert," *WorldAware*, 9 April 2020, <https://www.worldaware.com/covid-19-alert-myanmar-issues-movement-restrictions-april-9-ahead-thingyan-festival>.

the sheer scale of the inflow: an estimated 100,000 labourers crossed back into Myanmar from Thailand in the last week of March alone, with many bypassing official checkpoints.

Both Thailand and China officially closed their land borders in early April, leading to a buildup of sizeable crowds near the crossings. Some remained in place to await border reopenings, though reports suggested gate jumping across the Myanmar-Thai border was common. Others crossed the border furtively in its more porous areas, particularly where the reach of the Myanmar state is limited due to ongoing conflict. The absence of full border controls compounded concerns about the migrant labourer returnees, many of whom returned to villages across the country in areas where underdeveloped healthcare made identification and control of Covid-19 especially difficult.

The massive scale of Myanmar's quarantine measures warrants closer examination. Unlike in many other countries, the Myanmar government sought to provide facilities for all or nearly all returnees. This policy prompted a scramble in late March to find locations that could accommodate the tens of thousands of returnees for periods of two to three weeks, requiring empty schools, hostels, monasteries, stadiums, and other housing facilities, some still under construction. Conditions varied dramatically. Many air returnees were quarantined near international airports in Yangon, Mandalay, or Naypyidaw, where facilities were generally hygienic and spacious enough to allow for proper distancing, particularly given the modest numbers of those returnees. By contrast, facilities near land crossings dealt with far greater numbers and often poorer infrastructure, leading to crowding that some experts feared could inadvertently facilitate transmissions. Overwhelmed centres sent some returnees home for self-quarantine as space ran out. In nearly all cases, many day-to-day needs, such as provision of food, waste disposal, and control of movement outside of the facilities, were left to local authorities and volunteers to handle. Practices were necessarily improvised. These efforts often relied on strong and selfless community engagement, but the dearth of training and resources inevitably brought deviations from best practices. Upon release from quarantine facilities, most returnees were advised to self-quarantine at home for an additional week.

By mid-March, the government's measures began to expand to mitigation of local transmissions. Initial steps were limited to basic health recommendations, such as frequent handwashing and avoiding all mass gatherings, but quickly became more restrictive as the first domestic cases were confirmed. At the national level, universities and training facilities were ordered to shut down on 24 March, with reopening conditional on control of the virus. Schools, which were already closed for term break, were told reopening would be delayed. The Office of the President mandated that, with the exception of healthcare workers, government employees would work on a rotational basis. Without detailed instructions on

implementation, however, many offices were unsure of how to proceed, particularly since few employees had the capacity to work from home.

Across the country in the last week of March, townships—the lowest administrative level of the state—began ordering the closure of shops selling non-essential goods, though instructions were often ambiguous and inconsistent. Many street markets were also ordered closed and restaurants told to limit operations to take-out only. Buildings or streets with reported cases were locked down. A government directive on 19 April appeared to require an immediate closure of all factories. The wording, however, was so ambiguous that factory owners has little idea what to do.<sup>18</sup> The ensuing chaos led Aung San Suu Kyi to apologize three days later during a live video conference. The announcement provided some additional clarity, but the many remaining ambiguities compounded the disarray in the vital sector: an estimated 90,000 workers in the garment industry alone found themselves without wages due to factory suspensions and permanent closures.<sup>19</sup>

Restrictions on movement and public gatherings were rolled out as well. In an unprecedented move, the military postponed the symbolically important 27 March Armed Forces Day celebrations. The mid-April Thingyan festival, the country's most important public holiday that draws tens of thousands onto the streets in urban areas and sees many return to their ancestral villages, raised particular concern. To avoid potential super-spreader events, the national-level Union government cancelled official celebrations and instituted a ban on large gatherings through the end of April. It also discouraged public servants from travelling beyond their cities or towns. The meso-level regions and states, as well as lower-level townships, began implementing a series of movement control orders on 9 April.

The nature of those restrictions varied considerably across the country. Yangon ordered residents to stay at home from 10 to 19 April unless buying food or medications. This order was extended to several townships within Yangon, initially until the end of April. Several regions imposed curfews from 22:00 to 4:00 through the end of April. In Shan State, residents were required to obtain permission from local officials before any travel. Local public transportation was widely restricted or even closed, as was domestic distance transport. Mandalay banned non-essential travel into or out of the city through late April, while many

<sup>18</sup> Kyaw Ye Lynn, "Health checks clear factories to re-open after baffling shutdown order," *Frontier Myanmar*, 28 April 2020, [https://frontiermyanmar.net/en/health-checks-clear-factories-to-re-open-after-baffling-shutdown-order?fbclid=IwAR3rwTjtDKIO6i7OYO\\_pJrC2pX2jvRkaHe9Wzq2GmyhVPoOPSWHSgvgpfos](https://frontiermyanmar.net/en/health-checks-clear-factories-to-re-open-after-baffling-shutdown-order?fbclid=IwAR3rwTjtDKIO6i7OYO_pJrC2pX2jvRkaHe9Wzq2GmyhVPoOPSWHSgvgpfos).

<sup>19</sup> "Garment workers receive first payment from EU's Myan Ku emergency cash fund," *European Union External Action*, 30 April 2020, [https://eeas.europa.eu/headquarters/headquarters-homepage/78310/myanmar-garment-workers-receive-first-payment-eus-myan-ku-emergency-cash-fund-international\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/78310/myanmar-garment-workers-receive-first-payment-eus-myan-ku-emergency-cash-fund-international_en).

domestic flights were indefinitely cancelled. Long-distance bus services were initially suspended until the end of April, but this too was extended until the spread of Covid-19 was stabilized.

Myanmar's response, in short, was generally piecemeal and improvised. On many policy fronts, Union-level directives from committees and ministries provided high-level guidance, but often did so through ambiguous communications and with little inter-ministerial coordination. Lower-level governments were left to interpret instructions and find ways, often without sufficient resources or technical support, to implement them. Some local leaders, independent of higher-level guidance, also initiated everything from disinfection programs to information campaigns.<sup>20</sup> In other areas, particularly where the state's reach is limited, communities took fully autonomous initiatives to limit the risk of transmission.<sup>21</sup>

Unsurprisingly, policy reversals and ongoing modifications were widespread. Officials also struggled with sometimes contradictory instructions from different governmental levels and ministries. Reports noted tensions between officials and the general public in some areas, fuelled by the frustrations with inconsistent messaging and implementation of measures. In some instances, bottom-up pressure altered policy responses: movement control plans in Kayah State and Sagaing Region, for example, were retracted following heated criticism from citizens about the implementation plans and their potential economic impact. It should be noted that many countries, particularly in the low-income range that includes Myanmar, struggled with effective communication and coordination. It is also clear, however, that the complex power-sharing arrangement between the civilian government and military, together with the many capacity issues resulting from the transitions, further complicated the already difficult task at hand.

The military, sensing an opportunity to project competence and secure goodwill, took a series of autonomous steps in response to the pandemic. This began with opening some of its facilities for quarantining, as well as preparing military hospitals across the country to treat civilian patients. It further contributed portions of its own healthcare personnel to civilian hospitals and offered laboratories and equipment to bolster testing capacity. Its members of Parliament—the 2008 Constitution allocated a quarter of parliamentary seats to the military—started wearing masks in early March, well before their civilian counterparts did.

<sup>20</sup> See Paul Minoletti and Aung Hein, *Coronavirus Policy Response Needs and Options for Myanmar* (London: International Growth Centre, 2020).

<sup>21</sup> Khin Lin Kyaw and Philip Heijmans, "Myanmar's Poorest Take Virus Fight into Their Own Hands." *Bloomberg*, 13 May 2020, [https://www.bloomberg.com/news/articles/2020-05-13/diy-lockdowns-and-barricades-how-myanmar-is-fighting-the-virus?fbclid=IwAR29qnqdxjFr\\_eRBDVhzTc\\_vFg8L-QqZdViQ5yLgQtS5k1JpV0io8mxWfc](https://www.bloomberg.com/news/articles/2020-05-13/diy-lockdowns-and-barricades-how-myanmar-is-fighting-the-virus?fbclid=IwAR29qnqdxjFr_eRBDVhzTc_vFg8L-QqZdViQ5yLgQtS5k1JpV0io8mxWfc).

Through these and other highly visible gestures, it sought to claw back legitimacy and support from the electorate, making the pandemic an important site of pre-electoral contestation.

Responses to Covid-19 in IDP camps and conflict zones also warrant brief discussion. An estimated 480,000 people have been displaced by conflict within Myanmar.<sup>22</sup> Most are crowded into camps in Rakhine, Chin, Kachin, Shan, and Karen States, where conditions inhibit Covid-19 mitigation measures. Crowding makes physical distancing difficult if not impossible. Inadequate infrastructure and frequent water shortages—particularly as the initial outbreak coincided with the dry season—make handwashing and other hygiene-related practices infeasible. Healthcare provision is often lacking, and communication channels are limited or entirely cut off for many camps. In addition, the high prevalence of underlying medical conditions and poor nutrition among IDPs put them at higher risk. The government's main response has been to reduce the risks of an outbreak, primarily by restricting movement into and out of camps. While this pragmatic response might stem the introduction of the virus, it also exacerbates resource shortages within camps, making it ultimately unsustainable. Attempts have been made in some camps to raise awareness of Covid-19, for example, through the distribution of leaflets or messaging over loudspeakers. It is unclear, however, how widespread this has been.

In conflict areas beyond the control of the formal state, Ethnic Armed Organizations (EAOs)—the de facto local authorities—have also sought to reduce the risks of Covid-19.<sup>23</sup> Several formed committees to coordinate their actions with local civil society organizations. As early as February, some EAOs along the border with China imposed local travel restrictions, health checks, and bans on trade in wildlife, with some places even levying fines for infringement. Reports also note some EAOs implementing local lockdowns in Shan State, as well as the Karen National Union allowing only local residents to remain in its areas of control. Elsewhere, EAOs launched Covid-19-awareness campaigns based on WHO and MOHS directives. On the instruction of the President's Office, the Myanmar government formed a coordination and cooperation committee in late April to work with EAOs on the prevention and control of Covid-19, but its efficacy is conditional on overcoming deep mutual suspicions.

Despite international and domestic calls for a ceasefire during the height of the pandemic, conflicts between Myanmar's armed forces and ethnic armed groups

<sup>22</sup> While not within Myanmar's jurisdiction, an estimated 700,000 to 900,000 Rohingya have fled Myanmar for Bangladesh, where they are likewise crowded into camps that are vulnerable to Covid-19 outbreaks.

<sup>23</sup> "Myanmar: Continued conflict an impediment in the fight against COVID-19," *UNOCHA*, 28 April 2020, <https://www.unocha.org/story/myanmar-continued-conflict-impediment-fight-against-covid-19>.

remained active or increased in Rakhine, Chin, Shan, and Kachin States. These conflicts caused their own significant disruptions, including fresh displacements and dozens of civilian casualties. In a well-publicized late-April incident, a UN vehicle on a mission to support the Covid-19 response in Rakhine State came under attack; a WHO staff member was killed and a government healthcare worker seriously injured. Incidents like these increase the caution exercised by the United Nations and other humanitarian partners. As they provide important support services not only for the country's direct medical response but also for peripheral needs like food, shelter, and sanitation, the impact of reduced engagement is significant.

#### 4. Legal and Social Enforcement

Myanmar has a history of repressive military rule. This puts the civilian government, elected in 2015 to lead the transition to civilian rule, in a difficult position. The threat of Covid-19 requires a far-reaching response if its impact is to be moderated. With a potentially pivotal election on the horizon in late 2020, however, civilian leaders are wary of imposing hardships on the public, whether through measures that are perceived as overly repressive—and thus associated with the military rule they seek to distance themselves from—or are economically stifling. The delicate balancing act is complicated by the need to work through formal institutions shaped by decades of military rule. Moreover, only the military and the police—who under the 2008 Constitution report directly to the autonomous military—have the capacity to enforce centralized and far-reaching measures.

The military-linked Union Solidarity and Development Party (USDP), which led Myanmar briefly following political opening in 2011 and remains the largest opposition party in Parliament, proposed tabling a summons for the military-dominated National Defence and Security Council (NDSC). If convened, the NDSC would become the highest authority in the government, in effect granting the military more expansive authority over the country and decisively swinging the balance of the power in its favour. The Union Parliament speaker, however, declined the proposal, in effect maintaining the status quo and leaving the civilian government at least nominally in charge of the Covid-19 response.<sup>24</sup>

The government has primarily relied on two major laws to enforce measures associated with Covid-19. The first is the *Prevention and Control of*

<sup>24</sup> Moe Moe, "Myanmar Speaker Rejects Call to Summon Military-Majority Security Council to Address COVID-19," *The Irrawaddy*, 25 March 2020, <https://www.irrawaddy.com/news/burma/myanmar-speaker-rejects-call-summon-military-majority-security-council-address-covid-19.html>.

*Communicable Diseases law (The State Law and Order Restoration Council Law No. 1/95)*, which was enacted under military rule in 1995<sup>25</sup> and amended in late January 2011 to include other infectious diseases. The law contains a broadly worded clause requiring that “the public shall abide by the measures undertaken by the Department of Health.” Chapter VII of the law empowers “[a]n organization or an officer on whom power is conferred by the Ministry of Health [to] issue a prohibitive order or a restrictive order in respect to [the]: (a) right of the person suffering from Principal Epidemic Disease to leave and return to his house; (b) right of people living in the house, ward, village or township infected by Principal Epidemic Disease to leave and return thereto,” among other directives. This forms the primary legal basis for quarantines and other movement control measures. Chapter VIII specifies the penalties for failure to comply, giving the state considerable discretion to impose fines or prison sentences.

The second law is the *Natural Disaster Management Law (The Pyidaungsu Hluttaw Law No. 21, 2013)*, enacted in the shadow of the 2008 Cyclone Nargis that devastated large parts of the country. Its definition of natural disaster includes “outbreak of contagious diseases of human or animals.” The law gives the state far-reaching powers to form committees and implement “natural disaster management programmes” that “systematically and expeditiously reduce disaster risks.”<sup>26</sup> Its intent is to facilitate resource mobilization and coordination across tiers of government, in particular giving the committee the ability to more directly steer the actions of meso- and lower-level governments.

While comprehensive data are unavailable, the state appears to be making widespread use of the laws’ punitive provisions. Reports note jail sentences of between three and six months for individuals who defied quarantine measures or the ban on public gatherings.<sup>27</sup> Sentences of around one month have also been handed down to people found violating curfews in several parts of the country. Arrests are typically made by the police, who report to the military-controlled Ministry of Home Affairs rather than the civilian government. Again, ambiguities in the law and inconsistencies in enforcement were significant, with reports that similar violations were met with monetary fines in some instances but up to six months’ imprisonment in others. Other laws have been invoked as well.

<sup>25</sup> See the English version of the law at <http://www.asianlii.org/mm/legis/laws/pacocdllaorcln195895/>.

<sup>26</sup> *Natural Disaster Management Law (The Pyidaungsu Hluttaw Law No. 21, 2013)*, 31 July 2013, No. 21, 2013, <http://www.myanmar-law-library.org/law-library/laws-and-regulations/laws/myanmar-laws-1988-until-now/union-solidarity-and-development-party-laws-2012-2016/myanmar-laws-2013/pyidaungsu-hluttaw-law-no-21-2013-natural-disaster-management-law-burmese-and.html>.

<sup>27</sup> Zaw Zaw Htwe, “Myanmar Citizens Face COVID-19 Prosecutions for Breaching Rules,” *The Irrawaddy*, 10 April 2020, <https://www.irrawaddy.com/news/burma/myanmar-citizens-face-covid-19-prosecutions-breaching-rules.html>.



Three street artists were arrested under a law criminalizing speech that insults religion, for example, after Buddhist hardline groups complained that the grim reaper they depicted in a mural—which was to advocate staying at home to protect against Covid-19—resembled Buddhist monks.<sup>28</sup> Journalists covering conflict areas have also been targeted. The harshness of enforcement has drawn both domestic and international criticism given the vulnerable nature of many of those affected.

Pressure is mounting on the social front as well. Nyi Nyi Kyaw describes a Covid-19-induced shiver running down the collective spine of the Myanmar people, leading to panic buying and panic vigilantism.<sup>29</sup> There were numerous reports from as early as January of Myanmar workers refusing to enter workplaces shared with Chinese nationals unless the latter were removed or could prove they were disease-free. In other cases, panic-stricken residents tried to prevent returnees from entering their neighbourhoods, even if it was to self-isolate at home or in government-provided facilities. Reports of landlords evicting doctors and nurses have surfaced as well. These extreme reactions are at least partially a function of the trust deficit many have toward formal institutions following the decades of their decay under military rule. The prevalence of fake news, much of it through Facebook, further fuels such reactions.

## 5. Evaluation of Response and Challenges Moving Forward

Myanmar's political, economic, and conflict-related transitions profoundly shaped the country's response to Covid-19. The divided state and memories of repressive military rule constrain policy options and inhibit vital coordination, often undermining the efficacy of well-intended and well-designed initiatives. Economic precarity reduces the buffer vulnerable populations have to weather an extended interruption of economic activity. Ongoing conflict limits the state's reach into parts of the country's periphery, taking vital aspects of the pandemic response out of the formal state's hands and creating populations that live in extreme precarity. In short, the conditions prevalent in Myanmar demanded a delicate balancing act that reflects both the state's limited capacities and the population's many vulnerabilities when formulating an appropriate response to the pandemic. Myanmar is not a typical case, and both its policy decisions and their outcomes must be viewed in this light.

<sup>28</sup> "Myanmar: 3 Charged for COVID-19 Street Art," *Human Rights Watch*, 8 April 2020, <https://www.hrw.org/news/2020/04/08/myanmar-3-charged-covid-19-street-art>.

<sup>29</sup> Nyi Nyi Kyaw, "Covid-19 in Myanmar: Panic Vigilantism?," *ISEAS Media Commentary*, 2 April 2020.

Given the substantial constraints, there are clear positives to Myanmar's pragmatic response. The decisive action to prohibit large public gatherings during the country's most important public holiday may have prevented mass contagions. After a shaky start, political leaders have effectively used social media and other channels to communicate the grave risks posed by the pandemic, thus helping to curtail some of the riskiest behaviours even where formal measures were lacking. The massive state-led quarantining has also, despite the aforementioned hiccups, ensured isolation of a substantial portion of returnees, thereby reducing the threat of imported cases from regional hotspots. Clear shortcomings in the government's response, however, are evident as well. Intra-government coordination, complicated by the divided nature of the state, has often been inadequate, undermining the planning and implementation of many measures. Myanmar's already limited capacity to protect vulnerable populations has been stretched thinner by the pandemic, leaving them at especially high risk.

A final assessment of Myanmar's response to the pandemic will require greater hindsight than is available in May 2020. By mid-month, Myanmar still had fewer than 200 confirmed cases in its population of 53 million. This extraordinarily low count is presumably more a function of the low testing rates than it is reflective of actual disease prevalence. An accurate count may never emerge. Indeed, fuller estimates of prevalence likely require statistical modelling or proxy measures (such as excess deaths derived through funeral ceremonies, cremations, and burials), neither of which have yet been undertaken.

Covid-19 will almost certainly have profound implications for Myanmar's economic, political, and peace transitions. The 1997–1998 Asian Financial Crisis was deeply disruptive for much of Southeast Asia's political economy, ultimately leading to the fall of Indonesia's hybrid regime and triggering significant upheavals in other countries. The shockwaves from Covid-19 are likely to hit even harder. And unlike other regimes in Southeast Asia, Myanmar has no recent experience in dealing with global economic crises, having been insulated from them prior to the economic opening in 2011.

Several sectors key to Myanmar's development are already being hit hard. Numerous large garment factories have permanently closed, and the lucrative tourism sector is suffering massive losses. A disproportionate share of the economic pain will be borne by the poorest third of society, who have little access to social protections and effectively no savings. The government's official Covid-19 Economic Relief Plan, released in late April, has laudable objectives and is reasonably comprehensive given the resource constraints, but the funds allocated to it are paltry relative to comparative plans across the region.

Potential institutional impacts are worth noting. The central leadership's tendency toward having meso- and local-level governments formulate and implement most containment measures—rather than imposing them through

a centralized response that relies more heavily on the military or the military-controlled police—has perhaps inadvertently become a test-run for greater decentralization and even federalism, both of which have strong supporters and skeptics. Whether this trial becomes an impetus for systematic decentralization or instead a wave of consolidation around the centre, however, depends on how competing political factions emerge from the pandemic.

Economic crises have deeply shaken Southeast Asia's hybrid regimes in the past. How the economic hardship is managed will almost certainly affect partisan support in the late 2020 election. More broadly, the NLD has deep reservations about the military's entrenched powers and has struggled with the constitutionally enshrined power-sharing arrangement. The pandemic has laid bare the awkward—and for some, perhaps ultimately untenable—nature of the current institutional structure and will likely catalyze calls for more comprehensive reforms. The military, however, has strongly pushed back against efforts to reduce its role in politics and limit its expansive powers; it clearly sees the pandemic as the type of existential crisis that calls for its guidance and protection. Perhaps caution will prevail and the institutional status quo will precariously teeter on. But it is equally plausible that the Covid-19 crisis becomes the critical juncture for a more decisive transition. In that case, the question is: In which direction?

# Sri Lanka: Pandemic-Catalyzed Democratic Backsliding

*Bhavani Fonseka*,\* *Luwie Ganeshathasan*,\*\* and *Asanga Welikala*\*\*\*

## 1. Introduction

Covid-19 has posed for Sri Lanka not only a public health challenge and an economic challenge but also, perhaps most seriously, a crisis of constitutional democracy. A process of de-democratization had commenced with the election of President Gotabaya Rajapaksa in November 2019 and was expected to gather pace with an expected victory for the president's party in the parliamentary election that had been scheduled for April 2020 (but which was deferred due to the pandemic). It is still expected that when those elections are held the president's party will win—possibly with a landslide—and that thereafter constitutional changes will be made using the new legislative majority to consolidate and entrench the regime.

In terms of public health, Sri Lanka is fortunately not one of the worst-affected countries, with 1,633 confirmed cases of infection and 10 deaths as of 1 June 2020, these relatively low figures largely attributed to the preparedness of the public health system.<sup>1</sup> Although questions have been raised about the accuracy of government statistics, the scale of testing and contact tracing, and failures in providing protective equipment to front-line workers including military personnel (who have suffered a disproportionate number of infections), there is broad public approval of the government's crisis response. However, much more alarming are the clear signs in the government's response that the public health emergency has provided the impetus for an aggressive executive takeover of the state, steepening the curve of de-democratization.

\* Senior Researcher, Centre for Policy Alternatives (Sri Lanka).

\*\* Researcher, Centre for Policy Alternatives (Sri Lanka).

\*\*\* Lecturer in Public Law and Director of the Edinburgh Centre for Constitutional Law, School of Law, University of Edinburgh (<https://orcid.org/0000-0002-4624-1227>).

<sup>1</sup> "COVID-19 Live Situational Analysis Dashboard," Health Promotion Bureau, <https://hpb.health.gov.lk/covid19-dashboard/>.

In this chapter, we describe the aspects of the governmental crisis response that are the cause of worry, and offer an analysis based on a framework drawn from comparative politics and comparative constitutional law as to the agentic, institutional, and causal dimensions of the democratic backslide underway in Sri Lanka.<sup>2</sup> We conclude that while the pandemic has undoubtedly boosted the process of executive aggrandizement that had already commenced, that this catalysis may in fact also shorten the authoritarian cycle, because the accelerated de-democratization is likely to result in executive actions that cross the threshold of public tolerance sooner in what as yet remains a procedural democracy.

## 2. Background

The Indian Ocean island of Sri Lanka is a middle-income South Asian country characterized by high social welfare indices—including in public health—compared to other countries in the region and wealth category.<sup>3</sup> Sri Lanka's society is marked by ethnic and religious pluralism, albeit with an overwhelming Sinhala-Buddhist majority that regards itself as the dominant historic national community of the island. According to the 2012 census, the total population of Sri Lanka is 20,359,439, of which the main communities are 74.9 per cent Sinhalese, 11.15 per cent Sri Lankan Tamils, 9.3 per cent Muslims, and 4.12 per cent Up Country Tamils. The mismanagement of the politics of ethnic pluralism led to a protracted armed conflict between the Sinhala-Buddhist dominated state and Tamil secessionists, which ended in 2009.

The country became independent from Britain in 1948 as a Commonwealth dominion and became a republic in 1972. The current 1978 Constitution introduced semi-presidentialism, proportional representation, and a justiciable bill of fundamental rights. It retained constitutional commitments to the primacy of Buddhism and the unitary state (and until the Thirteenth and Sixteenth Amendments in 1987–1988, the Sinhala language), introduced by the first republican constitution in 1972. Partly as an Indian-mediated response to the then-intensifying ethnic conflict in the north and east of the island, the Thirteenth Amendment in 1987 introduced a system of devolution to Provincial Councils

<sup>2</sup> Unless otherwise indicated, we use concepts as developed in the following works. *De-democratization*: Charles Tilly, "Inequality, Democratization, and De-democratization," *Sociological Theory* 21, no. 1 (2003): 37; *democratic backsliding*: Ellen Lust and David Waldner, *Unwelcome Change: Understanding, Evaluating, and Extending Theories of Democratic Backsliding* (Washington DC: USAID, 2003); *executive aggrandizement*: Nancy Bermeo, "On Democratic Backsliding," *Journal of Democracy* 27, no. 1 (2016): 5; *constitutional democracy*: Tom Ginsburg and Aziz Z. Huq, *How to Save a Constitutional Democracy* (Chicago: University of Chicago Press, 2018): 9–15.

<sup>3</sup> "The World Bank In Sri Lanka," The World Bank, accessed 12 April 2020, <https://www.worldbank.org/en/country/srilanka/overview#1>.

within the overall supremacy of the unitary state. The Nineteenth Amendment in 2015 changed the nature of semi-presidentialism from a “president-parliamentary” to a “premier-presidential” model by strengthening the prime minister within the executive, alongside other changes which constrained the powers of the executive president by strengthening Parliament vis-à-vis the executive and establishing a fourth pillar framework to depoliticize senior public appointments and strengthen independent oversight commissions. Taken together, the structure of the state can be described as a semi-presidential unitary republic with some power-sharing through limited territorial devolution and proportional representation and some good governance safeguards in the form of fourth pillar institutions.

The Sri Lankan model of presidential government heavily centralizes power in the office held by one person. The post-colonial developmentalist rationale was that a fixed-term directly elected president would be able to rise above the confusion and chaos of parliamentary politics, provide stable government, take unpopular but necessary policy decisions, and thereby deliver the economic growth and development that had eluded Sri Lanka in its post-independence years. While the Constitution’s performance with regard to those instrumental objectives is debatable, it is inherently a model of government intended to weaken horizontal accountability within the executive and encourage executive dominance over the other branches, and in these respects, it has doubtlessly succeeded in practice.

The Nineteenth Amendment went some way toward improving horizontal accountability at the centre, but ample avenues for presidential dominance and centralization remain, especially in a political culture unreconciled to the democratic requirements of the premier-presidential model. Likewise, presidential centralization has been seen as inimical to power-sharing and especially greater territorial devolution as a strategy for the management of ethnic and religious pluralism. Nevertheless, the authoritarian centralization of power remains at the heart of the Constitution’s majoritarian legitimacy. For nationalists in the majority Sinhala-Buddhist community, presidentialism buttresses the unitary state, and these two principles together provide the essential basis of a strong state that preserves the primacy of the Sinhala-Buddhists and keeps the fissiparous tendencies of communal pluralism in check.

The change of government in the presidential and parliamentary elections of 2015 was prominently focused on redressing the excesses of the administration of President Mahinda Rajapaksa (the current president’s elder brother, now prime minister). A reformist coalition was elected to undertake constitutional reform, in particular to either abolish or substantially change the executive presidential system. The Nineteenth Amendment was seen as the first step, and while the government launched a process for drafting a new constitution in 2016, it did

not succeed. The reformist government, however, fatally damaged itself by its weak response to the 2019 Easter Sunday attacks by Islamist terrorists and revelations of gross incompetence and failures that had enabled the attacks to take place despite the availability of intelligence that could have prevented them.<sup>4</sup>

The election of President Gotabaya Rajapaksa in November 2019 was not only the victory of the “national security candidate” in the aftermath of Easter Sunday but also signified a direct challenge to the democratization reforms undertaken between 2015 and 2018. The president, with a Sinhala-Buddhist nationalist electoral base and past record as a military-bureaucratic strongman, has been explicit about his desire for a parliamentary majority that would enable him to roll back the restraints on presidential power introduced by the Nineteenth Amendment.

### 3. The Governmental Response to the Pandemic

The pandemic escalated after Parliament was dissolved ahead of the elections and when most courts had to be shut down for social-distancing purposes. Sri Lanka’s pandemic response, including the enforcement of an island-wide curfew for over five weeks, was, as of June 2020, entirely led by the executive, with extensive use of the security apparatus and without parliamentary or judicial oversight. Consistently with its ideology and style, the government has demonstrated impatience with constitutional and statutory requirements governing legal responses to national emergencies, instead preferring strategies that maximize executive discretion and the concentration of power in the executive.

#### A. Parliament and Elections

The president dissolved Parliament on 2 March 2020, setting the date of the election for 25 April and the first meeting of the next Parliament for 14 May 2020. The normal term of Parliament is five years, but the Constitution permits the president to dissolve Parliament and hold a general election at any time during the last six months of a Parliament’s term. President Rajapaksa used this power to dissolve Parliament six months ahead of the end of its term. If it had not been dissolved, the Parliament elected in 2015 would have ended its term on 1 September 2020. When the president dissolves Parliament, the Constitution requires him to set a date both for the election and for the first meeting of the next Parliament. The first meeting of the next Parliament must be a date within

<sup>4</sup> Report of the Select Committee of Parliament, 23 October 2019, <https://www.parliament.lk/uploads/comreports/sc-april-attacks-report-en.pdf#page=1>.

three months of the date of the dissolution. This date can be changed, but the new date must also be within the three-month period.<sup>5</sup> The underlying aim of these provisions is to ensure that elections are not indefinitely postponed and that a functioning Parliament is in place as quickly as possible.

The first confirmed Covid-19 case of a Sri Lankan citizen was reported on 11 March, coinciding with the WHO declaring it a pandemic. With the number of confirmed cases rising thereafter, calls to postpone the general election and to recall Parliament to assist the government in handling the pandemic response began to grow. But the president has firmly resisted these calls. Consequently, it was left to the Election Commission to announce on 21 March that the election could no longer be held on 25 April on account of the crisis. Subsequently, the Commission concluded that elections could not be held within the three-month period mandated by the Constitution and requested the president to seek appropriate directions from the Supreme Court. The president refused this request and insisted the Commission set a new date for elections. This paved the way for the Commission deciding on 20 June as the new date for elections.<sup>6</sup> The new date meant that Parliament would remain dissolved for more than the constitutionally mandated period of three months. In June 2020, with no clearly anticipated abatement of the virus, the Commission was reviewing its decision on the date of election with a strong likelihood of further postponing the election.

Sri Lanka was thus without a functioning Parliament and without any clarity as to when an election could be held. This resulted in an unprecedented dilemma. On the one hand, elections must be held for good constitutional reasons, but an election amidst a pandemic would likely exacerbate the spreading of the virus, creating a significant impact on human life, public health, and the economy. On the other hand, continuously postponing elections and not having an active Parliament is a violation of the Constitution and imperils constitutional democracy.<sup>7</sup> With continuing uncertainty about when the public health situation will improve sufficiently to enable elections, it would seem that the dissolved Parliament must be recalled. The Constitution provides multiple avenues for the summoning of a dissolved Parliament; all of them, however, require the president to act.<sup>8</sup> There is also nothing in the Constitution or the Parliamentary Elections Act preventing the president from withdrawing his proclamation of dissolution, with the effect of rescinding the dissolution.

<sup>5</sup> *Constitution of Sri Lanka*, 1978, art. 70(5) (a), (c).

<sup>6</sup> The Gazette of the Democratic Socialist Republic of Sri Lanka (Extra Ordinary) 2172/3 (2020), [http://www.documents.gov.lk/files/egz/2020/4/2172-03\\_E.pdf](http://www.documents.gov.lk/files/egz/2020/4/2172-03_E.pdf).

<sup>7</sup> *Karunatileke v. Dissanayake*, [1999] 1 SLR 157 at 173–174; *Muhammad et. al v. The Election Commission of Sri Lanka et al.*, Supreme Court Minutes, 15 December 2017.

<sup>8</sup> *Constitution of Sri Lanka*, 1978, arts. 70(7) and 155(4)(i).



The underlying aim of these provisions is clearly to ensure that there is legislative oversight of the executive during an emergency, such that even a dissolved Parliament may be recalled. But a constitutional crisis has developed due to the president's flat refusal to reconvene Parliament, for which, moreover, he has offered no explanation or constitutional reason. This is despite a solemn undertaking extended by most opposition parties in Parliament to support the government in combatting the pandemic if Parliament is recalled.<sup>9</sup>

## B. Public Finance

Public finance is one of the main areas in which the circumvention of Parliament poses constitutional problems. The general constitutional principle is that Parliament has full control over public finance.<sup>10</sup> One important, but highly limited, exception to this rule is where Parliament has not made any provision for expenditure during the period after the dissolution of a Parliament and the commencement of the next Parliament, during which time the president is permitted to make allocations from the Consolidated Fund. This is limited to expenditure for necessary "public services" and for a period of up to three months after the date set for the commencement of the new Parliament.<sup>11</sup> Parliament did not pass a budget for the year 2020, presumably because of the impending presidential election in November 2019. Instead, Parliament passed a Vote on Account on 23 October 2019, covering the period 1 January to 30 April 2020.<sup>12</sup> Even after the presidential election, no budget was presented to Parliament, and the October 2019 Vote on Account was the basis of government expenditure. This would have been adequate had the parliamentary election gone ahead on 25 April, but with the delay (and extra expenditures) resulting from the pandemic, as well as the refusal to recall Parliament, there was no longer parliamentary approval for government expenditure when the validity of the Vote on Account ended on 30 April.

However, after that date, the exception in Article 150(3), whereby the president can authorize limited expenditures for a limited period without parliamentary approval, can be taken to apply. But so long as the dissolution of 2 March remains in force, this period too ends on 14 August. In a context in which there

<sup>9</sup> D.B.S. Jeyaraj, "Responsible cooperation in return for restoration of Parliament," *Daily FT*, 29 April 2020, <http://www.ft.lk/columns/Responsible-cooperation-in-return-for-restoration-of-Parliament/4-699418>.

<sup>10</sup> *Constitution of Sri Lanka*, 1978, arts. 148–152. See also *In re the Appropriation Bill*, SCSD 3 & 4/2008; *In re the Fiscal Management (Responsibility) (Amendment) Bill*, SCSD 28 & 29/2016.

<sup>11</sup> *Constitution of Sri Lanka*, 1978, art. 150(3) and (4).

<sup>12</sup> Parliament of Sri Lanka, *Resolution under paragraph (2) of Article 150* (23 October 2019), [https://www.parliament.lk/files/documents\\_news/2019/vote-on-account/resolution.pdf](https://www.parliament.lk/files/documents_news/2019/vote-on-account/resolution.pdf).

is no certainty as to when the elections can be held, this is of limited help. To conform with the Constitution, not only an election but a budget would also have to be passed before that date. In the public health situation of mid-2020, this was an unrealistic deadline. In addition to being limited by time, the power of the president is also limited in scope to only expenditures that are “necessary for public services.” While this is not defined, it is clear the Constitution contemplates only such expenditures as are essential to keep public services running until such time as full provision through a budget approved by Parliament can be made. Additionally, the powers of the president do not extend to the ability to raise money through local and foreign debt, and statutory limits on the extent of public debt can only be changed by Parliament and cannot be overridden by the president.<sup>13</sup>

The response to the pandemic has also provided opportunities for ruling party politicians to abuse public resources, in the context of an impending election. Due to the restrictions on movement and little to no income generation, many Sri Lankans are reliant on assistance. Reports indicate ruling party politicians distributing essential items and cash, and organizing political events in the guise of Covid-19 assistance. These activities have widely received state and private media coverage favourable to the ruling party, raising serious questions concerning unfair electoral advantage.

### C. Curfew

Most of Sri Lanka came under an almost continuous curfew on 20 March. The government did not explain the legal basis for this curfew.<sup>14</sup> Aside from the declaration of a state of emergency, which requires the recall of Parliament, the Public Security Ordinance makes statutory provision for curfew without a formal state of emergency. However, this too requires a written proclamation from the president that must be approved by Parliament.<sup>15</sup> But because the overriding concern of the president had been to avoid recalling Parliament, the government had not engaged these provisions and instead sought to rely on regulations made under the Quarantine and Prevention of Disease Ordinance, which also offers no plausible legal basis to sustain an island-wide curfew of over one month.<sup>16</sup>

<sup>13</sup> See *Appropriation Act No. 6 of 2019*.

<sup>14</sup> “Curfew in Response to COVID-19: Legal Framework and Relevant Questions in Sri Lanka,” *Centre for Policy Alternatives*, 21 April 2020, <https://www.cpalanka.org/curfew-in-response-to-covid-19-legal-framework-and-relevant-questions-in-sri-lanka/>.

<sup>15</sup> *Public Security Ordinance No. 25 of 1947* ss. 16, 21, and 2(3).

<sup>16</sup> “Curfew in Response to COVID-19: Legal Framework and Relevant Questions in Sri Lanka”; “AG approves steps enforced by Police,” *Colombo Gazette*, 30 April 2020, <https://menafn.com/1100099455/Sri-Lanka-AG-approves-steps-enforced-by-Police>.

## D. Detention and Due Process

Media reports indicate thousands of arrests for curfew violations, but the legal basis for such arrests is unclear. For public health reasons, many courts across Sri Lanka were not fully functional, with the Attorney General's Department also closing down for several days, resulting in unprecedented challenges in access to justice.<sup>17</sup> It was in this context of dysfunction and crisis that the notable arrest of attorney-at-law Hejaaz Hizbullah took place. Since 14 April, Mr. Hizbullah has been detained under the Prevention of Terrorism Act (PTA), a law notorious for justifying the detention of individuals for decades without meeting even basic due process standards.<sup>18</sup> The authorities have indicated that he was being held in connection with investigations into the Easter Sunday 2019 terror attacks. However, without formal reasons or charges or production before a magistrate, the detention did not meet even the flawed procedural safeguards of the PTA, raising serious constitutional concerns.<sup>19</sup> As of 1 June 2020, legal challenges including through *habeas corpus* and fundamental rights applications had been hampered by the closure of the courts and the Attorney General's Department.

## E. New Administrative Structures

The government may be disinclined to follow constitutional procedures and the extensive existing legal framework for disaster management, but it is not averse to creating new structures. These are neither founded nor regulated on a formal legal footing but are based amorously on extended presidential discretion. They include the National Operation Centre for Prevention of Covid-19 Outbreak, headed by the army commander and acting chief of defence staff, and several presidential task forces which may be *ultra vires* the Constitution.<sup>20</sup> One task force is provided a broad mandate to handle the distribution of relief. Another was appointed to revive the economy and eradicate poverty. Both are headed by Basil Rajapaksa, a younger brother of the president and the prime minister. A third was appointed subsequently to handle measures to ensure

<sup>17</sup> Chandani Kirinde, "AG gives green light to 'quarantine curfew,'" *Daily FT*, 1 May 2020, <http://www.ft.lk/front-page/AG-gives-green-light-to-quarantine-curfew/44-699562>.

<sup>18</sup> "Locked Up Without Evidence – Abuses under Sri Lanka's Prevention of Terrorism Act," *Human Rights Watch*, 29 January 2018, <https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act>.

<sup>19</sup> "Over 150 lawyers write to BASL expressing concern over detention of Attorney," *Daily FT*, 25 April 2020, <http://www.ft.lk/news/Over-150-lawyers-write-to-BASL-expressing-concern-over-detention-of-Attorney/56-699226>.

<sup>20</sup> "Structures to Deal with COVID-19 in Sri Lanka: A Brief Comment on the Presidential Task Force," *Centre for Policy Alternatives*, 8 April 2020, <https://www.cpalanka.org/structures-to-deal-with-covid-19-in-sri-lanka-a-brief-comment-on-the-presidential-task-force/>.

health security at military camps and is headed by a former air force commander. The COVID-19 Healthcare and Social Security Fund, established in March, has collected hundreds of millions of rupees in donations.<sup>21</sup> There is little operational transparency in the functioning of this fund and no oversight or accountability in the absence of Parliament.

## F. Militarization and Securitization

Since his election, the president actively incorporated the military and intelligence sector in governance, with former and serving military officials appointed to key civilian roles.<sup>22</sup> Despite a constitutional bar on the president holding any substantive Cabinet portfolio and no cabinet minister of defence being appointed, the presidency informally led the defence apparatus with an expanding role in governance. Military and intelligence officials had an increasing relevance in the Covid-19 response, with military and intelligence structures playing an active role in contact tracing, quarantine, assistance delivery, and even providing entertainment to those under lockdown.<sup>23</sup> With no oversight of these activities, concerns are raised as to whether surveillance may be used for other purposes, including targeting government critics and opponents. Some senior military officers involved in the pandemic response stand accused of wartime abuses, including war crimes, while others are part of the security establishment that was criticized for serious failures in the Parliamentary Select Committee report on the 2019 Easter Sunday attacks. The lack of movement on key recommendations aimed at security sector reform and accountability is of renewed concern when the same entities and individuals are given a prominent role in the Covid-19 response.

## G. Civil Liberties and Vulnerable Groups

The crisis has had an adverse impact on civil liberties and minority rights. There have been reports of the police arresting, or threatening to arrest, persons

<sup>21</sup> “COVID-19 Healthcare and Social Security Fund swells to 703 million,” *Daily News*, 17 April 2020, <https://www.news.lk/news/political-current-affairs/item/30003-covid-19-healthcare-and-social-security-fund-swells-to-703-million>.

<sup>22</sup> Bhavani Fonseka and Uvin Dissanayake, “A Commentary on Sri Lanka’s Recent Political Challenges and Prospects for the Future,” *Centre for Policy Alternatives*, 13 March 2020, <https://www.cpalanka.org/sri-lankas-recent-political-challenges-prospects-for-the-future/>.

<sup>23</sup> “Prompt intervention of military and police reduced impact of COVID-19,” *Sunday Observer*, 19 April 2020, <http://www.sundayobserver.lk/2020/04/19/opinion/prompt-intervention-military-and-police-reduced-impact-covid-19-defence-sec-maj>.

accused of spreading fake news or criticizing officials.<sup>24</sup> There have been worrying indications of “racial profiling,” with the Muslim community in particular facing much of the hostility.<sup>25</sup> In particular, the official requirement that those dying of the coronavirus must be cremated rather than buried upset Muslim religious sensitivities and is presently challenged in the Supreme Court. State and pro-government private media coverage of this issue raised serious concerns about the violation of the privacy and religious sentiments of the deceased and their families. The hostile environment against Muslims was aggravated by the first-year anniversary of the 2019 Easter Sunday terror attacks, the aftermath of which saw some of the worst organized violence against a minority. The media and official narrative around several arrests of Muslims in connection with the attacks in the lead-up to the anniversary raised questions as to whether the arrests were timed to coincide with the one-year anniversary.

The response to the pandemic also provided opportunities for ruling party politicians to abuse government resources, particularly in the context of an impending election. Due to the restrictions on movement and having little to no income, most Sri Lankans were reliant on assistance. Reports indicate ruling party politicians distributing essential items and cash and organizing events in the guise of Covid-19 assistance, receiving wide media coverage that could influence elections.

Unsurprisingly, short-term and long-term economic impact of the pandemic was expected to be devastating in what was already an underperforming economy.<sup>26</sup> But recovery would be additionally impeded by the government’s command-and-control economic measures, the weakness or absence of political institutions to ensure scrutiny and accountability, and executive centralization affecting the quality of decision-making in the national economic interest. Because of the protracted lockdown, daily wage-earners and low-income communities have struggled to cope with many unable to access even basic goods. The advice on physical distancing is a challenge for many who live in dwellings that are not conducive to such measures. Moreover, reports highlight possible biases in the response, with some low-income areas coming under lockdown for suspicion of contributing to the spread of the virus and instances where the homeless were sent to quarantine.<sup>27</sup> Measures targeting low-income communities were

<sup>24</sup> Human Rights Commission of Sri Lanka, *Limiting Freedom of Expression in a Democracy: The Need to Strike a Lawful Balance* (25 April 2020).

<sup>25</sup> Shereena Qazi, “Sri Lanka: Muslims face extra threat as coronavirus stirs hate,” *Al Jazeera*, 11 May 2020, <https://www.aljazeera.com/news/2020/05/sri-lanka-muslims-face-extra-threat-coronavirus-stirs-hate-200510183518512.html>.

<sup>26</sup> Sarath Rajapatirana, “Economic implications of COVID-19,” *Daily FT*, 5 May 2020, <http://www.ft.lk/columns/Economic-implications-of-COVID-19/4-699725>.

<sup>27</sup> “Over 300 homeless in capital Colombo sent to quarantine centres,” *ColomboPage*, 18 April 2020, [http://www.colombopage.com/archive\\_20A/Apr18\\_1587150014CH.php](http://www.colombopage.com/archive_20A/Apr18_1587150014CH.php).

defended on public health grounds, but questions remain regarding their proportionality and necessity amid growing socio-economic fissures.

Early reports also indicated a spike in domestic violence cases as a result of the lockdown, with women facing particular challenges with accessing assistance, schemes not recognizing female-headed households, and other specific needs faced by women.<sup>28</sup> As of June 2020, none of the entities established to respond to Covid-19 had taken a gendered lens to the response.

#### 4. The Impact on Constitutional Democracy

The foregoing discussion demonstrates the problematic nature of the government's crisis response from the normative perspective of constitutional democracy. The functioning of constitutional democracy can be assessed according to procedures and values as well as the extent to which accountability is delivered. How well procedural democracy functions can be judged by the extent to which elections are free, fair, participatory, and inclusive. The extent to which substantive democracy is protected can be evaluated by the state of protection for fundamental civil and political rights, in particular the freedoms of thought, expression, association, assembly, and personal liberty. The quality that distinguishes constitutional democracy from every other system of government is accountability. Governing institutions must be horizontally accountable through checks and balances between the three organs of the state and vertically accountable to citizens through not only elections and fundamental rights but also through processes of good governance. Accountability is ensured only if there is a functioning framework both to hold executive decision-makers responsible before the legislature and the courts and to impose meaningful sanctions when they fall below expected standards. Despite the centralization of power reflected institutionally in presidentialism and the unitary state and culturally through the dominance of ethnicized majoritarianism, the Sri Lankan Constitution does include fundamental commitments to these principles of constitutional democracy and provides for the institutional structures and the legal doctrines to realize them in practice. What the extraordinary circumstances and measures involved in the pandemic response highlight is the tension between these formal constitutional commitments to democracy and the political practices through which government is animated at a moment of heightened national anxiety that fosters populist authoritarianism.

<sup>28</sup> Maneshka Borham, "Lockdown intensifies domestic violence," *Sunday Observer*, 5 April 2020, <http://www.sundayobserver.lk/2020/04/05/news-features/lockdown-intensifies-domestic-violence>.

Given that the dissolution of Parliament in March 2020 had been long planned, the timing of the pandemic's arrival was coincidental, but it did present a serendipitous opportunity for an executive-minded ruling party and a president with a military background to exploit the situation. From the protracted curfew, the arrests and detentions, and the irregularities in relation to elections and public finance to the negation of institutional oversight mechanisms and the use of informal administrative structures and the military, the government's crisis response has adversely affected democratic freedoms and the rule of law. It was open to the government to take an approach more consistent with the provisions of the Constitution and other existing laws that regulate national emergencies and therefore more consistent with the principles of legality, accountability, and individual freedom. But using the established constitutional and statutory means requires the subjection to checks and balances and, in particular, the recall of Parliament. The president's determination to avoid recalling Parliament was the key to every other executive act and omission and explains the willingness to disregard the strict requirements of the Constitution and the law. A response led exclusively by the executive through extensions of presidential power was not only convenient and consistent with the authoritarian governing ideology of the president and ruling party but also potentially electorally advantageous for hoarding the credit for the pandemic response.<sup>29</sup> With checks and balances on hold, most of the electorate in an enforced lockdown, a recently defeated and weak opposition, little or no opportunity for opposition campaigning, and a dominance of the public-information environment through state and state-friendly private media houses, the projected 2020 parliamentary election was expected to be held in conditions of maximum advantage to the ruling party. By enhancing both the probability of government's victory and the scale of its legislative majority, the momentum of the project of executive aggrandizement could be overwhelming in the short term.

The pandemic in these ways provided an opportunity to escalate the process of executive aggrandizement, but it is by nature a set of conditions that would soon end. It is therefore important to account for the process of democratic backsliding that was already underway in order to understand how that process could unfold. The Rajapaksa regime is the primary vehicle of Sinhala-Buddhist nationalism, which sees the island as the only homeland of the Sinhalese people, the inheritors of Theravada Buddhism. These claims animate nationalist political mobilization, underpinned by a powerful tradition of historiography and the agency of the Buddhist monkhood, a clientelist

<sup>29</sup> Jayadeva Uyangoda, "A constitutional solution to the impending constitutional crisis," *Groundviews*, 30 April 2020, <https://groundviews.org/2020/04/30/a-constitutional-solution-to-the-impending-constitutional-crisis/>.

conception of democratic politics, and the constitutional commitment to a presidential unitary state that reifies majoritarianism and commensurately weakens the substantive rights and accountability of constitutional democracy. The executive aggrandizement underway is both a product of this ideology and the means through which the ideology's preferences for the institutional shape of the state will be advanced through constitutional change after the election. The government's concrete proposals for constitutional change remain to be seen after the parliamentary election. But they can be expected to directly weaken horizontal accountability through expanding executive dominance and indirectly weaken vertical accountability by increasing the scope for strategic electoral manipulation and shrinking the environment for the exercise of democratic rights. The Sinhala-Buddhist identity is also likely to be more closely integrated and its primacy affirmed within the Sri Lankan state through statecraft practices, political rhetoric, and constitutional symbolism. In aggregate, these measures attack the political equality that is central to democratic pluralism and describe the nature of the current backslide.

The procedural majoritarianism at the heart of this nationalist worldview explains the main source of its legitimacy, but also its main—and in *realpolitik* terms, perhaps only—limitation. Because it is central to their own legitimacy, and indeed because they are good at winning elections, the Rajapaksas as the agents of executive aggrandizement have a rational interest in preserving procedural democracy even as they hollow out democracy's constitutional substance and replace it with clientelist forms of political negotiation between the people and the state. This self-interest has protected the fundamental institution of periodic elections through testing periods of authoritarianism in the past, such that Sri Lanka has enjoyed an unbroken period of electoral democracy since 1931. Moreover, a basic psephological analysis indicates that the electorate swings between democratization and authoritarianism at fairly regular intervals. Electorally sanctioned authoritarianism begins with a relatively wide leeway at the start of a term of office but sooner or later exceeds the threshold of public tolerance. It is difficult to provide an objective predictive framework for that threshold, but authoritarian regimes' weakening of institutional accountability plays a central part by encouraging poor decision-making, violence, corruption, and impunity. With institutional channels for the airing and distribution of public disaffection weakened, elections become the main means through which authoritarianism is corrected. Most recently, the Rajapaksa government of 2005–2015 amply illustrates these features. It is likely that the more pronounced military-bureaucratic character of the present one, stimulated and emboldened at the inception by the pandemic response, would reach that threshold sooner than the last one.



## 5. Conclusion

The Covid-19 pandemic posed more an economic and a democratic than a public health challenge in Sri Lanka. An executive takeover of the state using the pandemic response as an opportunity boosted an ongoing project of executive aggrandizement. The pandemic is therefore likely to be a catalyst of democratic backsliding, including in providing democratic legitimation for de-democratizing constitutional changes in the second half of 2020. However, the tolerance for electoral authoritarianism has limits and there may be sufficient institutional resilience within Sri Lanka's relatively well-entrenched tradition of electoral democracy to provide a corrective. This possibility depends on multiple variables, but most of all on the extent to and pace at which the regime stretches the public tolerance of authoritarianism.<sup>30</sup>

<sup>30</sup> **Postscript:** Eight petitions challenging the constitutionality of setting the date of the parliamentary election beyond the constitutionally stipulated three months from the date of dissolution were filed in May. After eleven days of preliminary hearings, a five-judge bench of the Supreme Court unanimously refused all petitioners leave to proceed on 2 June. The Court did not give reasons. There was thus no judicial clarification of the constitutional rules concerning the breach of the three-month rule, the recall of Parliament, or indeed when the election and meeting of a new Parliament would take place. The upshot was an indirect validation of executive rule in *prima facie* violation of the Constitution. On 2 June, moreover, two further Presidential Task Forces, comprising primarily of serving and retired military personnel, were appointed to oversee, among other things, the building of "a Secure Country, Disciplined, Virtuous and Lawful Society [*sic*]." For details, see "The Appointment of the Two Presidential Task Forces," *Centre for Policy Alternatives*, 8 June 2020, <https://www.cpalanka.org/the-appointment-of-the-two-presidential-task-forces/>.

PART V  
ECONOMY, CLIMATE,  
AND SUSTAINABILITY



# Governments and Business

*Tan Cheng-Han\* and Jiangyu Wang\*\**

## 1. Introduction

The Covid-19 pandemic in general had a deleterious effect on business enterprises. A few businesses did well, but for the most part, the effect of widespread lockdowns was disastrous. Businesses were unable to operate at optimal capacity—if at all—with predictable effects. It was difficult, for instance, to see how airlines could survive with flights numbering at a fraction of what they used to be,<sup>1</sup> and the same can be said of many other industries, especially tourism, food and beverage, hospitality, retail, and personal services. Corporate insolvencies and personal bankruptcies were forecasted to soar.<sup>2</sup> This and rising job insecurity further crimped consumption, placing further strain on economies. This vicious cycle was expected to be exacerbated by new waves of infection, leading to further or extended lockdowns and some degree of social unrest if not managed properly.

In these extraordinary and unprecedented circumstances, it was not surprising that governments stepped in to forestall a collapse of markets brought about by the simple fact that ordinary life had been disrupted.<sup>3</sup> Within months of the first case in Wuhan, jobless claims surged in the United States with an unemployment rate of 14.7 per cent in April 2020, translating to 20.5 million pandemic-related job losses.<sup>4</sup> This dire situation was mirrored in Europe with

\* Dean and Chair Professor of Commercial Law, City University of Hong Kong (<https://orcid.org/0000-0002-7615-9005>).

\*\* Professor, School of Law, City University of Hong Kong (<https://orcid.org/0000-0002-9810-833X>).

<sup>1</sup> Lee and Dy, Chapter 26, this volume.

<sup>2</sup> For example, see Pamela Danziger, “List of Retail Companies on Bankruptcy Watch Is Growing Fast Amid Coronavirus Crisis,” *Forbes*, 3 April 2020, <https://www.forbes.com/sites/pamdanziger/2020/04/03/retail-companies-on-death-watch-is-growing-fast-as-covid-19-puts-non-essential-retailers-on-life-support/#32971d1925ea>.

<sup>3</sup> Part of the plan involves action by central banks to maintain liquidity, which may necessitate temporarily relaxing prudential regulations such as capital adequacy ratios for financial institutions. This is dealt with in the chapter on central banks: Hofmann, Chapter 7, this volume.

<sup>4</sup> Heather Long and Andrew Van Dam, “U.S. unemployment rate soars to 14.7 percent, the worst since the Depression era,” *The Washington Post*, 9 May 2020, <https://www.washingtonpost.com/business/2020/05/08/april-2020-jobs-report/>.

about 4 million French workers, equivalent to a fifth of private sector employees, applying for temporary unemployment benefits in the second half of March 2020. Spain, which already had a high unemployment rate, saw 800,000 people losing their jobs in March 2020, while almost 1 million people in the United Kingdom had already applied for universal credit, a state benefits scheme.<sup>5</sup>

Asia too was not spared, with official statistics in China showing that around 5 million more people were out of work in the first two months of 2020.<sup>6</sup> Official statistics suggested a 5.9 per cent unemployment rate in March 2020, although this number is unlikely to be reliable as it only includes jobless numbers in urban areas and does not include a large number of migrant workers and those in rural areas.<sup>7</sup> In Bangladesh, millions of transport workers had been left jobless after the government imposed a nationwide lockdown to stem the spread of the novel coronavirus.<sup>8</sup> In Hong Kong, more than 134,000 people had already lost their jobs by early 2020, pushing the city's unemployment rate to 3.7 per cent in February, the highest level since 2011.<sup>9</sup> Some of this rise in unemployment was likely due to civil unrest in the second half of 2019 and aggravated by the pandemic.

The employment situation was expected to worsen. According to the director of the International Monetary Fund's (IMF's) Asia and Pacific Department, growth in Asia was expected to stall at 0 per cent in 2020. This would be the worst growth performance in almost sixty years. Downward revisions to growth are substantial, ranging from 3.5 percentage points in the case of Korea to over 9 percentage points in the case of Australia, Thailand, and New Zealand. In addition to the impact from domestic containment measures and social distancing, two other key factors shaped the outlook for Asia. The first is the expected synchronized contraction of the global economy by 3 per cent, the worst recession since the Great Depression. Asia's key trading partners were also expected to contract sharply, including the United States by 6 per cent and Europe by 6.6 per cent. Second, China's growth was projected to decline from 6.1 per cent to 1.2 per

<sup>5</sup> Mamta Badkar et al., "Jobless claims surge in Europe and US as global economy stifles," *Financial Times*, 3 April 2020, at 1.

<sup>6</sup> Evelyn Cheng, "Roughly 5 million people in China lost their jobs in the first 2 months of 2020," *CNBC*, 16 March 2020, <https://www.cnbc.com/2020/03/16/china-economy-millions-lose-their-jobs-as-unemployment-spikes.html>.

<sup>7</sup> Laura He and Nectar Gan, "80 million Chinese may already be out of work. 9 million more will soon be competing for jobs, too," *CNN*, updated 8 May 2020, <https://edition.cnn.com/2020/05/08/economy/china-unemployment-intl-hnk/index.html>.

<sup>8</sup> Najmus Sakib, "COVID-19: Lockdown leaves millions jobless, helpless in Bangladesh," *Anadolu Agency*, 9 April 2020, <https://www.aa.com.tr/en/asia-pacific/covid-19-lockdown-leaves-millions-jobless-helpless-in-bangladesh/1798786>.

<sup>9</sup> Martin Choi and Ka-sing Lam, "Hong Kong's property prices to fall by up to 20 per cent as the city's jobless ranks swell amid Covid-19 pandemic," *South China Morning Post*, 8 April 2020, <https://www.scmp.com/business/article/3078850/hong-kongs-property-prices-fall-20-cent-citys-jobless-ranks-swell-amid>.

cent in 2020. During the Global Financial Crisis China's growth performance was little changed because of massive fiscal stimulus. No such stimulus was expected this time, so China would not help Asia's growth as it did in 2009.<sup>10</sup> Part of the reason was concern over market distortions in China that might be caused by stimulus measures, as the fiscal stimulus during the Global Financial Crisis had been subject to much criticism by Chinese economists.<sup>11</sup> Uncertainty over the trajectory of the pandemic also made it sensible to adopt a more cautious approach.

Lockdowns and social distancing led to a vicious cycle of low growth and disruptions to business. In turn, declining business and consumer confidence inflicted further pain on the economy and job security, with spiraling negative effects on business enterprises. Some degree of state intervention was therefore necessary. Obviously, getting public health policy correct was essential, but with high infection rates and the need to avoid further waves of infection, it was foreseeable that only a vaccine might bring the pandemic to an end. Until this happened, business needed a health policy of its own to mitigate the economic and social fallout of this vicious cycle.

The outlines of such a policy across governments in Asia and beyond emerged clearly. Beyond liquidity and stimulus measures taken by central banks that feature in many past recessions, many Asian jurisdictions saw unprecedented provision of financial support and measures to businesses and individuals to tide them over and lessen the risk of insolvency.<sup>12</sup> These measures included temporary moratoriums on financial obligations and debt recovery, relief from other contractual obligations, employment support, increases to the debt thresholds for the commencement of insolvency proceedings, and infrastructure investments. These extraordinary measures, if effective, had the potential to become part of an expanded standard playbook to deal with future economic shocks, and this chapter will focus on them with particular reference to China, Hong Kong, Malaysia, and Singapore.

<sup>10</sup> Chang Yong Rhee, "COVID-19 Pandemic and the Asia-Pacific Region: Lowest Growth Since the 1960s", *IMF Blog*, <https://blogs.imf.org/2020/04/15/covid-19-pandemic-and-the-asia-pacific-region-lowest-growth-since-the-1960s/>. See also Finbarr Bermingham and Orange Wang, "Coronavirus: China's economy shrank for the first time since 1976 in first quarter," *South China Morning Post*, 17 April 2020, <https://www.scmp.com/economy/china-economy/article/3080327/coronavirus-chinas-economy-shrank-first-time-1976-first>.

<sup>11</sup> For example, see [Zhang Jun], "[Debating the Four Trillion Programme]," *Guancha*, 1 July 2012, [https://www.guancha.cn/ZhangJun/2012\\_07\\_01\\_81955.shtml](https://www.guancha.cn/ZhangJun/2012_07_01_81955.shtml) [name and title translated from Mandarin, here and throughout this chapter, unless indicated otherwise].

<sup>12</sup> For example, by the end of May 2020 Singapore had dedicated SGD 92.9 billion, almost 20 per cent of its GDP, to mitigate the effects of the pandemic; see "In full: DPM Heng Swee Keat's \$33b Fortitude Budget speech," *The Straits Times*, 26 May 2020, <https://www.straitstimes.com/politics/in-full-dpm-heng-swee-keats-33b-fortitude-budget-speech>.

## 2. Insolvency Thresholds

Singapore was one of the earliest countries to pass fairly comprehensive legislation (on 7 April 2020) “to provide temporary measures, and deal with other matters, relating to the COVID-19 pandemic”<sup>13</sup>—indeed, as of May 2020, it was the only country in Asia to have done so. Parts 2 and 3 of the *Covid-19 Act* deal with temporary relief for inability to perform contracts and temporary relief for financially distressed individuals, firms, and other businesses, respectively, and are to be in force for a period of one year.<sup>14</sup> Nevertheless, the minister may only prescribe periods of relief not exceeding six months at a time for the purposes of both parts, which the minister may extend or shorten more than once.<sup>15</sup>

Various types of business vehicles are permitted in Singapore, and accordingly there are provisions in Part 3 that temporarily modify the financial thresholds applicable to insolvency proceedings for such business vehicles. In this chapter, we will highlight two representative provisions. The first is Section 20, which modifies a number of provisions in the *Bankruptcy Act*.<sup>16</sup> A key provision of the *Bankruptcy Act* is Section 61, which, among other measures, sets SGD 15,000 as the financial threshold for bankruptcy applications against debtors unable to pay their debts. A debtor is presumed to be unable to pay a debt where a statutory demand has been served and at least twenty-one days have lapsed since the statutory demand was served without any application to set aside such demand.<sup>17</sup> For the duration of the prescribed period, Section 20(1)(d) of the *Covid-19 Act* has modified the threshold amount to SGD 60,000, while Section 20(1)(e) states that the presumption of inability to pay a debt only arises if six months have lapsed from service of the statutory demand.

Similarly, under the *Companies Act*, a company may be wound up if it is unable to pay its debts.<sup>18</sup> It is deemed to be unable to do so if, among other considerations, it owes more than SGD 10,000, such sum is due and a demand has been made, and the company has for three weeks neglected to pay such sum or otherwise come to a resolution with its creditor.<sup>19</sup> The *Covid-19 Act* modifies this to

<sup>13</sup> *COVID-19 (Temporary Measures) Act 2020*, Introductory Note (Singapore) [*Covid-19 Act*]. See also Alexander Loke, “Singapore Acts to Temporarily Suspend the Enforcement of Certain Contracts During the Economic Storm Caused by the Coronavirus Outbreak,” *Oxford Business Law Blog*, 18 May 2020, <https://www.law.ox.ac.uk/business-law-blog/blog/2020/05/singapore-acts-temporarily-suspend-enforcement-certain-contracts>.

<sup>14</sup> *Covid-19 Act*, s. 1(2).

<sup>15</sup> *Covid-19 Act*, s. 3.

<sup>16</sup> *Bankruptcy Act*, Cap 20, Revised Edition 2009 (Singapore) [*Bankruptcy Act*]. The *Bankruptcy Act* applies to individuals including, where a bankruptcy order has been made against a firm, each of the partners in the firm.

<sup>17</sup> *Bankruptcy Act*, s. 62(1).

<sup>18</sup> *Companies Act*, Cap 50, Revised Edition 2006, s. 254 (1)(e) (Singapore) [*Companies Act*].

<sup>19</sup> *Companies Act*, s. 254(2)(a).

SGD 100,000 and six months, respectively. Similar measures were taken in other jurisdictions such as India<sup>20</sup> and Australia.<sup>21</sup>

### 3. Relief from Contractual Obligations

In general, parties to a contract are held strictly to their contractual obligations, as commercial certainty is important to business entities. At common law, terms may be implied in (that is, read into) contracts, though the bar for doing so is necessarily high given that the parties have not clearly agreed to such terms. As Lord Bingham M.R. put it in *Philips Electronique Grand Public SA v. British Sky Broadcasting Limited*:<sup>22</sup>

The courts' usual role in contractual interpretation is, by resolving ambiguities or reconciling apparent inconsistencies, to attribute the true meaning to the language in which the parties themselves have expressed their contract. The implication of contract terms involves a different and altogether more ambitious undertaking: the interpolation of terms to deal with matters for which, ex hypothesi, the parties themselves have made no provision. It is because the implication of terms is so potentially intrusive that the law imposes strict constraints on the exercise of this extraordinary power.

This being the state of the law, an event of the severity of the Covid-19 pandemic was likely to give rise to a number of common issues for many contracts.

For instance, if the parties to a contract have not expressly made provision for any accommodation to their contractual rights and obligations in the event of a pandemic, would such a provision be implied as between them if one of the parties cannot perform its obligations as a result of Covid-19? A related issue is whether the doctrine of frustration may apply so as to end the contract. A pandemic could well make the performance of a contract impossible, particularly if it has to be performed within a relatively short period of time. The parties could of course have provided for a force majeure clause in their contract, as such clauses are fairly common; questions of interpretation of such a clause will then arise. Force majeure clauses are intended to excuse failure of performance that arises

<sup>20</sup> See announcement relating to the *Insolvency and Bankruptcy Code, 2016*, Indian Finance Minister Smt. Nirmala Sitharaman, "Finance Minister Smt. Nirmala Sitharaman Speech on IBC-Notification under IBC Section 4," *IBC Laws*, 24 March 2020, <https://ibclaw.in/finance-minister-smt-nirmala-sitharaman-speech24-03-2020-on-ibc/>.

<sup>21</sup> "Temporary relief for financially distressed businesses," Australian Government, 22 March 2020, [https://treasury.gov.au/sites/default/files/2020-03/Fact\\_sheet-Providing\\_temporary\\_relief\\_for\\_financially\\_distressed\\_businesses.pdf](https://treasury.gov.au/sites/default/files/2020-03/Fact_sheet-Providing_temporary_relief_for_financially_distressed_businesses.pdf).

<sup>22</sup> [1995] EMLR 472 at 481.



from causes beyond the control of parties such as war, insurrections, accidents, government action, or acts of God, which, we suggest, includes a pandemic. If the difficulty cannot be overcome within a period of time, these clauses typically allow either party to terminate the agreement upon giving notice.

While all this is well and good in ordinary times, there are several disadvantages in a pandemic, when such a large number of contracts is potentially affected. The first is the knock-on effect of contracts on other contracts; often, *A* is only able to fulfil *A*'s contract to *B* if *C* in turn fulfils *C*'s contract to *A*. The enforceability of *A*'s contract with *C* may therefore determine whether *B* can enforce *B*'s contract with *A*. Further, the applicability of the legal doctrine would be uncertain. As mentioned, terms are not lightly to be implied, and there will often be a degree of uncertainty in determining whether the doctrine of frustration or a force majeure clause is triggered. Another disadvantage is that the law can sometimes be a blunt instrument. Where the doctrine of frustration applies, for instance, the parties are freed from their obligations and the loss lies where it falls, which may not be ideal. Courts cannot rewrite contracts however much individual judges may feel they are inadequate or flawed.<sup>23</sup> Finally, beyond the legal issues, the ability for economies to bounce back quickly would be severely affected if numerous contracts came to an end rather than being suspended.

The *Covid-19 Act* therefore seeks to minimize business discontinuity and was a good short-term measure. The key is Section 5, which provides that where a party to a "scheduled contract" ("*A*") is unable to perform an obligation that is to be performed on or after 1 February 2020; the inability is to a material extent caused by Covid-19; and *A* has served a notification for relief on a relevant party which will principally be the other parties to the scheduled contract, the other parties ("*B*") may not take certain specified actions in relation to such obligation until the earliest of the expiry of the prescribed period, the withdrawal of *A*'s notification, or an assessor makes a determination that the case in question is not one to which Section 5 applies.

A "scheduled contract" is defined in Section 2 as a contract that falls within a description of contracts set out in the Schedule to the *Covid-19 Act* unless otherwise prescribed. Such contracts include loan agreements to enterprises<sup>24</sup> that are secured against certain types of assets such as commercial or industrial immovable property, and plant, machinery, or fixed assets which are used for manufacturing or other business purposes, provided such assets are located in Singapore.

<sup>23</sup> *Attorney General of Belize v. Belize Telecom Ltd.* [2009] UKPC 10 at para. 16, [2009] 1 WLR 1988.

<sup>24</sup> The term "enterprise" in the Schedule means a body corporate or unincorporated that carries on business in Singapore where not less than 30 per cent of its shares or other ownership interest is held by Singapore citizens or permanent residents or both and the turnover of the group to which it belongs does not exceed SGD 100 million in the latest financial year. Relief against the enforcement of loans is therefore targeted at small and medium-sized enterprises.

Scheduled contracts also include performance bonds or the equivalent; hire purchase agreements relating to plant, machinery, or fixed assets located in Singapore or commercial vehicles; event contracts; tourism related contracts; construction or supply contracts; and leases or licences of non-residential immovable property.

The specified actions that *B* may not take include<sup>25</sup> the commencement or continuation of court action or arbitration against *A* or *A*'s guarantor; the enforcement of security over immovable property; the commencement of insolvency proceedings; the repossession of any goods under any chattels leasing or hire purchase agreement; the termination of a scheduled contract; and the exercise of a right of re-entry or forfeiture under a scheduled contract.<sup>26</sup> Any person who without reasonable excuse contravenes Sections 5, 6, or 7 of the *Covid-19 Act* as previously described is guilty<sup>27</sup> of an offence and liable on conviction to a fine not exceeding SGD 1,000, which is *de minimis* and therefore of symbolic value. More importantly, any proceedings commenced in breach of Section 5(2) of the *Covid-19 Act* must be dismissed upon lodgment of a copy of the notification for relief, and certain actions such as a call on a performance bond and the forfeiture of a deposit under Sections 6(2) and 7(2) of the *Covid-19 Act*, respectively, are void.<sup>28</sup>

#### 4. Temporary Moratoriums on Financial Obligations and Debt Recovery

The *Covid-19 Act* contains certain provisions that limit debt recovery by preventing the enforcement of security or the commencement of insolvency proceedings, without preventing a claim for debt recovery per se. The legislation is complemented by action taken by the financial industry. On 31 March 2020, the Monetary Authority of Singapore, together with other financial sector bodies, announced a package of measures to help ease the financial strain on individuals and small and medium-sized enterprises (SMEs) caused by the Covid-19 pandemic.<sup>29</sup> In relation to SMEs, they may opt to defer principal payments on their secured term loans up to 31 December 2020, subject to banks' and finance

<sup>25</sup> *Covid-19 Act*, s. 5(3).

<sup>26</sup> Sections 6 and 7 of the *Covid-19 Act* provide for additional relief for inability to perform construction or supply contracts and event- or tourism-related contracts respectively. For instance, Section 6(6) provides that where a person is unable to supply goods or services in accordance with the terms of the contract on or after 1 February 2020, the fact that the inability to perform the obligation in the contract was to a material extent caused by a Covid-19 event is a defence to a claim for breach of contract.

<sup>27</sup> Pursuant to Section 8(1).

<sup>28</sup> *Covid-19 Act*, s. 8(4).

<sup>29</sup> "MAS and Financial Industry to Support Individuals and SMEs Affected by the COVID-19 Pandemic," Monetary Authority of Singapore, 31 March 2020, <https://www.mas.gov.sg/news/>

companies' assessment of the quality of the security provided. SMEs will also be able to extend the tenure of their loans by up to the corresponding principal deferment period if they wish. Such relief will be available to SMEs that continue to pay interest and are in good standing with their banks and finance companies.

A similar announcement was made by the Malaysian Central Bank about a week earlier.<sup>30</sup> Banking institutions in Malaysia were to offer a deferment of all loan/financing repayments for a period of six months, with effect from 1 April 2020. This offer was applicable to performing loans, denominated in Malaysian Ringgit, that had not been in arrears for more than ninety days as at 1 April 2020. Interest would continue to accrue on such loans. The Central Bank also stated that banking institutions would also facilitate requests by corporations to defer or restructure their loans/financing repayments in a way that would enable viable corporations to preserve jobs and swiftly resume economic activities when conditions improved. Corporations were encouraged to approach their banking institutions to discuss their repayment plans and the restructuring of credit facilities.

China, and several other countries in Asia,<sup>31</sup> have also adopted this approach. In China, as early as the end of January 2020, five central agencies, including the People's Bank of China, the Ministry of Finance, and the China Banking and Insurance Regulatory Commission jointly issued a circular to provide "financial support" to companies in China.<sup>32</sup> In the circular, banks are required to provide special treatment for firms whose businesses are affected by the pandemic. They are prohibited from "discretionarily withdrawing, terminating or delaying loans" made to such firms, especially the small, medium, and micro-sized enterprises (SMMEs).<sup>33</sup> On 1 March 2020, another five central agencies, including the

media-releases/2020/mas-and-financial-industry-to-support-individuals-and-smes-affected-by-the-covid-19-pandemic.

<sup>30</sup> "Measures to Assist Individuals, SMEs and Corporates Affected by COVID-19," Bank Negara Malaysia, 25 March 2020, [https://www.bnm.gov.my/index.php?ch=en\\_press&pg=en\\_press&ac=5018](https://www.bnm.gov.my/index.php?ch=en_press&pg=en_press&ac=5018).

<sup>31</sup> For instance, India (*see* "COVID-19 Relief Measures," State Bank of India, accessed 14 May 2020, <https://sbi.co.in/stopemi>); Thailand (*see* "Banks around the world are suspending loan repayments as coronavirus hits borrowers," *The Straits Times*, 1 April 2020, <https://www.straitstimes.com/asia/se-asia/banks-around-the-world-are-suspending-loan-repayments-as-coronavirus-hits-borrowers>); the Philippines and South Korea (*see* "Government Responses to COVID-19 and Insolvency Regime Comparisons – Selected Asian Jurisdictions," Mayer Brown, updated 8 April 2020, <https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2020/03/asia-insolvency-restructuring-comparison-table-by-jurisdiction.pdf>).

<sup>32</sup> *See* "[Circular on Further Strengthening Financial Support to Enterprises to Prevent and Control the Coronavirus]," Yin Fa [2020] 29, 31 January 2020, [http://www.gov.cn/zhengce/zhengceku/2020-02/01/content\\_5473639.htm](http://www.gov.cn/zhengce/zhengceku/2020-02/01/content_5473639.htm) ("Circular No. 29").

<sup>33</sup> "[Circular on Further Strengthening Financial Support to Enterprises to Prevent and Control the Coronavirus]," Point 3.

three just mentioned, issued a notice to direct banks to provide grace periods to SMMEs in loan repayments.<sup>34</sup>

## 5. Employment Support

A major impact of the pandemic is the effect it had on business cash flows. This would affect the ability of businesses to meet their recurring costs such as loan repayments, rent, and wages. A number of governments instituted measures to help businesses with such costs. Singapore and Hong Kong introduced relatively generous wage support schemes. The economic and social rationale of such schemes is clear. They acted as a cushion against even greater loss of employment and would allow businesses to resume normal operations more seamlessly when conditions allowed. Under Singapore's Jobs Support Scheme (JSS),<sup>35</sup> the government would co-fund the first SGD 4,600 of gross monthly wages to each local employee, i.e., Singapore citizens and permanent residents, for nine months. There are three levels of co-funding depending on the industry in question. The highest tier was aviation and tourism where the JSS would provide 75 per cent of the first SGD 4,600. This was followed by food services at 50 per cent and all other sectors at 25 per cent. However, for the months of April and May, wage support was 75 per cent for all sectors to support firms during the "circuit breaker" period.<sup>36</sup>

In Hong Kong, the Employment Support Scheme was introduced to provide a wage subsidy that was equivalent to 50 per cent of the wages of the employees up to a wage cap of HKD 18,000 per month. The purpose of the subsidy was to allow employers to keep their staff for the following six months. Employers would be required to have no redundancy or layoffs during the months that they receive such wage subsidies from the government.<sup>37</sup>

While China did not introduce a massive fiscal stimulus, it did introduce measures to protect jobs. On 24 January 2020, the Ministry of Human Resources and Social Security (MHRSS) issued a circular aimed at protecting employees.<sup>38</sup> According to the circular, employers were required to pay salaries as usual and

<sup>34</sup> "[Circular on Implementing the Policy of Allowing SMMEs to Temporarily Defer Loan Repayments]," Yin Bao Jian Fa [2020] 6, 1 March 2020, [http://www.gov.cn/zhengce/zhengceku/2020-03/02/content\\_5485597.htm](http://www.gov.cn/zhengce/zhengceku/2020-03/02/content_5485597.htm).

<sup>35</sup> "Budget 2020," Government of Singapore, [https://www.singaporebudget.gov.sg/budget\\_2020/budget-measures/stabilisation-and-support-package](https://www.singaporebudget.gov.sg/budget_2020/budget-measures/stabilisation-and-support-package).

<sup>36</sup> Singapore's euphemism for a lockdown.

<sup>37</sup> Secretary for Labour & Welfare Dr. Law Chi-kwong, "Employment support is vital," 19 April 2020, [https://www.news.gov.hk/eng/2020/04/20200419/20200419\\_170735\\_285.html](https://www.news.gov.hk/eng/2020/04/20200419/20200419_170735_285.html).

<sup>38</sup> "[Circular on Properly Handling Labor Relations during the Period of Preventing and Controlling Covid-19 Epidemic]," MHRSS, 24 January 2020, [http://www.mohrss.gov.cn/wap/zc/zcwj/202002/t20200227\\_360811.html](http://www.mohrss.gov.cn/wap/zc/zcwj/202002/t20200227_360811.html).

extend labour contracts for employees affected by the disease either because of illness or mandatory quarantine.<sup>39</sup> Although employers were given flexibility in negotiating with employees on readjustments to salaries and working hours, they were expected not to dismiss employees or at least to limit layoffs.<sup>40</sup> Labour departments at local levels were also required to strengthen their supervision of companies with a view to protecting the interests of employees.<sup>41</sup>

After early February 2020, when the overall policy direction of the Chinese Party-state shifted to the resumption of work and production (*fugong fuchan*),<sup>42</sup> China's policy and regulatory measures in relation to labour issues became friendlier to business. These measures could be classified roughly into two categories. First, the government provided subsidies, on a limited scale, for firms' job training.<sup>43</sup> Second, recognizing the genuine difficulties that businesses were facing, the government encouraged enterprises and labour to negotiate with a view to making mutual adjustments that could help the enterprises to survive:

Enterprises which have encountered difficulties in production and operation as a result of the epidemic situation are encouraged to enter into negotiations with employees through democratic and consultative procedures with a view to readjusting salaries, rotating posts, shortening working hours, etc. For the enterprises which are temporarily unable to pay wages, they should be guided to negotiate with trade unions or representatives of employees to postpone payment, so as to help enterprises reduce the pressure of capital turnover.<sup>44</sup>

Unlike some other jurisdictions, China did not offer to cover employment benefits. This appears to have been justified on the basis that the priority was to get employees back to work and that this was possible within a reasonable timeframe. The Chinese government may have taken the view that it was the supply rather than the demand shock that was the dominant issue facing the country,<sup>45</sup> and getting employees back to work was the key, while remaining alert

<sup>39</sup> “[Circular on Properly Handling Labor Relations],” art. 1.

<sup>40</sup> “[Circular on Properly Handling Labor Relations],” art. 2.

<sup>41</sup> “[Circular on Properly Handling Labor Relations],” art. 4.

<sup>42</sup> See “[State Council Issued Circular to Require Strengthened Prevention and Controlling of the Covid-19 Epidemic while Orderly Resuming Enterprises' Work and Production],” 9 February 2020, [http://www.gov.cn/zhengce/2020-02/09/content\\_5476550.htm](http://www.gov.cn/zhengce/2020-02/09/content_5476550.htm).

<sup>43</sup> “[Circular on Actively Promoting Job Placement during the Period of Covid-19 Prevention and Control],” *Ren She Bu Ming Dian* [2020] 2, 5 February 2020, [http://www.gov.cn/zhengce/zhengceku/2020-02/06/content\\_5475179.htm](http://www.gov.cn/zhengce/zhengceku/2020-02/06/content_5475179.htm).

<sup>44</sup> “[Opinions on Stabilizing Labor Relations to Support Enterprises to Resume Work and Production],” *Ren She Bu Fa* [2020] 8, 7 February 2020, Point 5, [http://www.gov.cn/zhengce/zhengceku/2020-02/08/content\\_5476137.htm](http://www.gov.cn/zhengce/zhengceku/2020-02/08/content_5476137.htm).

<sup>45</sup> Bert Hofman, Sarah Tong, and Li Yao, “Implications of the COVID-19 Outbreak for China's Economy,” Commentary No. 12, East Asian Institute, 28 February 2020, <https://research.nus.edu.sg/eai/wp-content/uploads/sites/2/2020/03/EAIC-12-20200228.pdf>.

to the risk of a second wave of infection if businesses resumed operations too soon. To facilitate the reopening of the economy, the Chinese Party-state ordered ministries and local governments to help firms “orderly and actively resume their work and production.”<sup>46</sup> To this end, the State Council tied the promotion of resumption of work and production to the reform of the business environment, a project which Premier Li Keqiang had been pursuing since the beginning of his term.<sup>47</sup> It remained to be seen whether this approach would give further impetus to the reform effort beyond the immediate concerns resulting from the pandemic. Local governments were required to simplify the procedures and reduce red tape for firms to resume business, such as the publication of a prescribed list with the fewest possible conditions necessary to ensure that adequate measures were in place to prevent infection when work resumed.<sup>48</sup>

## 6. Investments in Infrastructure

Making investments in infrastructure is a tried and tested method of boosting the economy during a downturn. Often this is done by bringing forward infrastructural investments that have been planned. Such investments, done properly, not only provide a temporary boost to the economy but provide continuing societal benefits after completion, including to businesses that benefit from such investments. Although this approach is not novel, it is worth noting that this appears to have been one of the major planks in China’s approach to Covid-19.

The concept of “new infrastructure” was first mentioned in the Chinese Communist Party’s annual economic conference in 2018.<sup>49</sup> In the wake of the coronavirus outbreak, this concept was confirmed by the Standing Committee of the Political Bureau, the Chinese Communist Party’s highest organ, as one of China’s chief economic responses with the long-term aim of pushing for a technology-driven structural upgrade of its economy and boosting industry productivity and innovation.<sup>50</sup> On 20 April 2020, the National Development and

<sup>46</sup> “[Guiding Opinions on Effectively Preventing and Controlling Epidemic while Actively and Properly Promoting the Resumption of Work and Production],” *Guo Fa Ming Dian* (2020) 13, 9 April 2020, [http://www.gov.cn/zhengce/content/2020-04/09/content\\_5500698.htm](http://www.gov.cn/zhengce/content/2020-04/09/content_5500698.htm).

<sup>47</sup> Zhang Yue, “China to further improve business environment by addressing market concerns,” 27 November 2019, [http://english.www.gov.cn/premier/news/201911/27/content\\_WS5dde9413c6d0bcf8c4c17e5e.html](http://english.www.gov.cn/premier/news/201911/27/content_WS5dde9413c6d0bcf8c4c17e5e.html).

<sup>48</sup> “[Circular of the Office of the State Council on Further Simplifying Approval Procedures and Improving Services to Properly Promoting Enterprises’ Resumption of Work and Production],” *Guo Ban Fa Ming Dian* [2020] 6, 4 March 2020, Point 1, [http://www.gov.cn/zhengce/content/2020-03/04/content\\_5486767.htm](http://www.gov.cn/zhengce/content/2020-03/04/content_5486767.htm).

<sup>49</sup> [What Is the New Infrastructure?], *Xinhuanet*, 26 April 2020, [http://www.xinhuanet.com/politics/2020-04/26/c\\_1125908061.htm](http://www.xinhuanet.com/politics/2020-04/26/c_1125908061.htm).

<sup>50</sup> “[What Is the New Infrastructure?].”

Reform Commission clarified the scope of new infrastructure as information technology infrastructure, converged infrastructure, and innovation infrastructure.<sup>51</sup> New infrastructure investments cover seven areas, including 5G, artificial intelligence (AI), industrial internet, big data centres, ultra-high voltage power transmission, intercity high-speed rail and intercity rail transit, and new energy vehicle charging piles.

In response to this call, by the middle of April 2020, thirteen of thirty-one Chinese provinces had published lists of investment projects, of which eight provinces announced investment figures amounting to RMB 33.83 trillion in total.<sup>52</sup> For instance, Sichuan province announced a list of 700 investment projects totaling RMB 4.4 trillion, with RMB 600 billion scheduled for 2020. The investments “include a railway connecting the province with the autonomous region of Tibet, an airport in the city of Leshan, as well as an ultra-high voltage power transmission line to Jiangxi province.”<sup>53</sup>

China’s approach to infrastructure investment appeared to be an enlightened one as the investments included those in industries that were projected to be important in the future. It is clear that even prior to Covid-19, structural changes were taking place in the economies of many Asian territories. The pandemic had the potential of speeding up these changes because of the way in which it forced people to adapt to a fundamentally new reality. While some things would certainly go back to the way they were, it was anticipated that some changes would be more enduring. The need to restructure economies was therefore likely more urgent than before, and China’s approach in this regard may be seen as a sign of more to come in other jurisdictions.

## 7. Conclusion

It is clear that businesses during the pandemic were suffering and so too were many employees. Insolvencies were scheduled to hit record highs in many regions leading to unemployment on a scale that was unprecedented. To deal with the short-term consequences of the pandemic, many governments intervened in the business sphere on a massive scale, and it is likely that more will have to be done to manage medium- to longer-term outcomes, especially if the pandemic

<sup>51</sup> See “[National Development and Reform Commission Clarified the Scope of New Infrastructure for the First Time and Would Issue Guiding Opinions for It],” *The Paper*, 20 April 2020, [https://www.thepaper.cn/newsDetail\\_forward\\_7054170](https://www.thepaper.cn/newsDetail_forward_7054170).

<sup>52</sup> “[What Is the New Infrastructure?].”

<sup>53</sup> Frank Tang, “Coronavirus: will China opt for massive infrastructure spending spree to save its economy as it did in 2008?,” *South China Morning Post*, 2 March 2020, <https://www.scmp.com/economy/china-economy/article/3064646/coronavirus-will-china-opt-massive-infrastructure-spending>.

poses a longer-term problem and/or other pandemics arise. The measures collectively taken up until May 2020 went beyond responses to previous economic downturns. This reflected the unprecedented nature of Covid-19, though, as mentioned at the beginning of this chapter, these measures had the potential to become part of an expanded playbook to deal with future economic crises. The world may therefore continue to see more interventionist governments, and not only in the realm of business.





# Nationalism, Consolidation, and Rationalization in the Aviation Industry

Jae Woon Lee\* & Michelle Dy\*\*<sup>1</sup>

## 1. Introduction

The Covid-19 pandemic has taken a tremendous toll on the global economy, and the airline industry was hit hard by the global crisis. Although the airline industry has always been vulnerable to external shocks such as wars, disease outbreaks, and the 11 September 2001 (9/11) terrorist attacks, none of them has affected the airline industry to the degree that Covid-19 has (see Figure 1). Indeed, the steep decline in air travel in the early stages of the pandemic, followed by the progressive closure of borders in early 2020,<sup>2</sup> presented the airline industry with an unprecedented existential threat.

In the first few months of 2020, the airline industry was in survival mode. As a capital- and labour-intensive industry, it incurred high fixed and variable costs, including leasing costs for aircraft, parking payments at airports, and salaries for employees despite devastating market conditions. Since almost no airlines could survive the Covid-19 slump without state intervention, airlines began calling on governments for enormous bailouts, and states started taking drastic measures. Experts in early 2020 predicted that the growth of passenger traffic would not reach 2019 levels until 2022 at the earliest, in part due to an expected global recession in 2021.<sup>3</sup> This recovery might be V-shaped, but the turnaround was expected to occur at various times in different markets.<sup>4</sup>

\* Assistant Professor, Faculty of Law, Chinese University of Hong Kong (<https://orcid.org/0000-0003-2581-9728>).

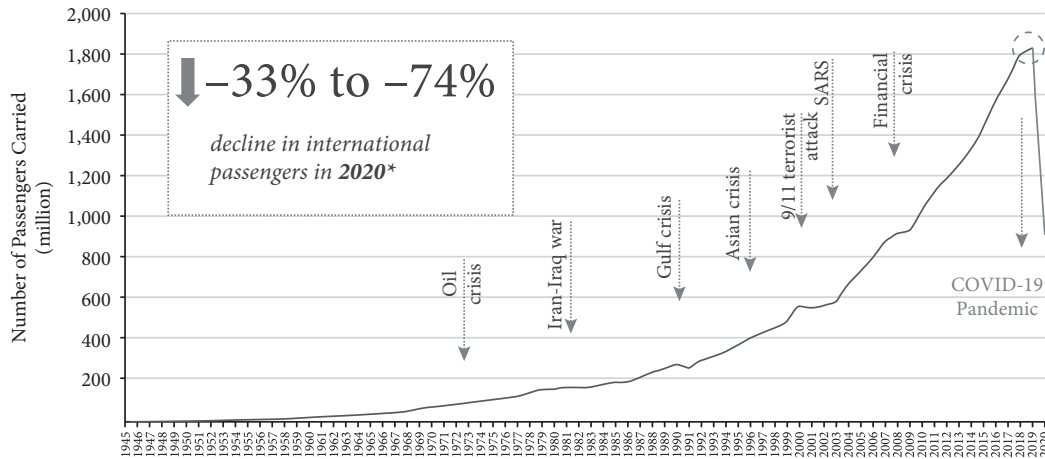
\*\* Global Affairs and Government Relations Manager, AirAsia Group.

<sup>1</sup> Although Michelle Dy is currently employed by AirAsia, this chapter was written in her personal capacity. The opinions expressed here are her and her co-author's own and do not reflect the view of AirAsia or any of its subsidiaries or affiliates.

<sup>2</sup> See Neo and Lee, Chapter 6, this volume.

<sup>3</sup> Jamie Freed, "Airline Industry Braces for Prolonged Recovery from Coronavirus Crisis," *Reuters*, 3 April 2020, <https://www.reuters.com/article/health-coronavirus-airlines/airline-industry-braces-for-prolonged-recovery-from-coronavirus-crisis-idUSL4N2BQ4FR>.

<sup>4</sup> Brian Pearce, "IATA COVID-19 Impact Assessment," *IATA Economies*, March 2020, <https://www.iata.org/en/iata-repository/publications/economic-reports/third-impact-assessment/>.



**Figure 1** World international passenger traffic evolution (1945–2020)<sup>a</sup>

Source: International Civil Aviation Organization (ICAO).

<sup>a</sup> ICAO Air Transport Bureau, *Effects of Novel Coronavirus (COVID-19) on Civil Aviation: Economic Impact Analysis* (Montreal: ICAO, 2020), <https://www.icao.int/sustainability/Documents/COVID-19/ICAO%20Coronavirus%202020%2004%2024%20Econ%20Impact.pdf>.

The purpose of this chapter is twofold. First, it aims to capture the moment by briefly analyzing how governments and the airline industry responded to the Covid-19 crisis. Secondly, it sets out possible structural changes in the airline industry arising from the crisis. The chapter proceeds as follows. After summarizing in section 2 how governments, especially in Asia, have supported the airline industry, we analyze how Covid-19 changed and will continue to change the industry, outlining three key mega-trends: namely, nationalization (section 3), consolidation (section 4), and rationalization (section 5). In section 6, we conclude that although the precise trajectory of the aviation industry is uncertain, there is no doubt that the Covid-19 pandemic will fundamentally change the industry.

## 2. Government Measures to Support the Aviation Industry

Government responses to the pandemic have so far been unequal and mixed. Although governments in Asia have responded in different ways to business challenges,<sup>5</sup> only a handful have decided to extend financial assistance to the airline industry or specific airlines, with that assistance ranging from direct financial support to direct subsidies to bridging loans and loan guarantees (see Table 1).

<sup>5</sup> See Tan and Wang, Chapter 25, this volume.

**Table 1** Direct financial assistance responses by selected governments in Asia (as of June 2020)

Country	Financial Assistance Provided by Government or Government-Owned Entities
Hong Kong	(1) Direct subsidies to Hong Kong-based airlines for every aircraft owned (2) HK government rescue package to Cathay Pacific amounting to HKD 27.3 billion
Korea	(1) Provide KRW 300 billion in loans to LCCs suffering liquidity shortages (2) State-backed lenders provide KRW 1.2 trillion and KRW 1.7 trillion in loans to Korean Air and Asiana Airlines, respectively
Singapore	SGD 19 billion in rights issuance, bonds, and bridging loans to Singapore Airlines backed by Temasek, a state-owned company that also owns 55.46 per cent of the said airline
Taiwan	TWD 50 billion in loans to six airlines

Of these support measures, the most extensive was the direct capital infusion from a 100-per-cent-state-owned entity to Singapore Airlines. With a value of SGD 19 billion, the financial assistance given by other governments paled in comparison.

Governments in other regions have responded more decisively, with the United States leading the pack with a whopping USD 29 billion in loans and loan guarantees for air carriers and USD 32 billion in payroll protection grants for air carriers and their contractors under the *Coronavirus Aid, Relief and Economic Security (CARES) Act*. Many European countries provided financial assistance to their biggest airlines. Ryanair, the region's most successful low-cost carrier (LCC), has threatened to respond with legal action, stating that support should be provided to "all EU airlines in proportion to their share of traffic in a particular country" rather than provided selectively.<sup>6</sup> However, the European Commission's recent approval of German state aid to compensate Germany-based airline Condor for Covid-19-related losses clarifies its view that assistance for specific companies is at the discretion of each EU member state.<sup>7</sup>

<sup>6</sup> "Ryanair May Legally Challenge EU State Bailouts for National Carriers," *The Irish Times*, 24 April 2020, <https://www.irishtimes.com/business/transport-and-tourism/ryanair-may-legally-challenge-eu-state-bailouts-for-national-carriers-1.4237144>.

<sup>7</sup> "State Aid: Commission Approves €550 Million German State-guaranteed Loan to Compensate Airline Condor for Damage Caused by Coronavirus Outbreak," Brussels, European Commission, 27 April 2020, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_752](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_752).

**Table 2** Fiscal and non-fiscal measures extended by selected Asian governments to airlines and the aviation industry (as of April 2020)

	CH	HK	MO	ID	IN	JP	MY	PH	TH	SG
<b>Fiscal Measures</b>										
Tax rebates, exemptions, deferment, and waivers	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Subsidies (e.g., cash, rent, and utilities)		✓				✓	✓		✓	✓
Training allowance		✓					✓			✓
Discounts and rebates										
<i>Airport-related charges</i>	✓	✓		✓		✓	✓	✓	✓	✓
<i>Fuel</i>				✓					✓	
<i>Rent</i>									✓	✓
Marketing support		✓		✓		✓	✓	✓		
<b>Non-Fiscal Measures</b>										
Relaxation of regulations										
<i>Airport slots</i>		✓								
<i>Licenses/permits</i>									✓	
<i>Cargo flights</i>	✓									

Giving direct financial assistance to airlines was more the exception than the rule in Asia. Most governments in the region chose to support the aviation industry through a host of indirect fiscal and non-fiscal regulatory measures. Of the various responses by Asian governments (see Table 2), some were helpful, but most airlines in the region were still burning through cash in May 2020 to pay for significant fixed and semi-fixed costs, estimated at 49 per cent of an airline's total monthly expenditures.<sup>8</sup>

<sup>8</sup> Brian Pearce, "Cash Burn Analysis," IATA, March 2020, <https://www.iata.org/en/iata-repository/publications/economic-reports/Covid-19-cash-burn-analysis/>.

Because of movement control orders imposed by many countries as well as the need to conserve cash, most airlines have temporarily ceased operations and asked their employees to work at reduced hours or take pay cuts; others have had to retrench (lay off) some of their staff. Governments have responded in different ways to cushion the impact on workers in general (and in some cases, those specifically in the airline industry), for example, by subsidizing a portion of airline employees' monthly wages (Singapore);<sup>9</sup> granting a three-month salary subsidy for workers earning below MYR 4,000 (Malaysia);<sup>10</sup> offering cash aid for workers affected by the government-imposed lockdown (Philippines);<sup>11</sup> providing unemployment benefits for insured workers affected by the coronavirus (Thailand);<sup>12</sup> and extending a cash grant to each permanent resident aged eighteen or older (Hong Kong).<sup>13</sup> Airlines have also started to offer their customers credit shells (i.e., credit accounts created specifically for a particular ticket reservation which can be used for future bookings by the same passenger) for cancelled flights instead of refunds as another cash-saving measure. As an added incentive, some have even offered bonus credits for passengers who choose to accept travel vouchers.

The public finance context is critical. Most Asian governments already had fiscal deficits in 2019.<sup>14</sup> So while some Asian countries were perceived as indifferent to the plight of the aviation industry, many were simply unable to afford more aggressive measures. Aviation has often been put on the back burner as governments focus on addressing more pressing public health and welfare concerns.<sup>15</sup> However, financial support is not all that governments can provide. They also have, at their disposal, other regulatory tools that don't require breaking the bank. Indeed, governments need to be more flexible in formulating

<sup>9</sup> Zhaki Abdullah, "COVID-19 Aviation Support Package Will Help Industry Ride Out Crisis: Analysts," *Channel News Asia*, 27 March 2020, <https://www.channelnewsasia.com/news/singapore/Covid-19-aviation-support-package-will-help-industry-ride-out-12583134>.

<sup>10</sup> Prime Minister Muhyiddin Yassin, "Prihatin Rakyat Economic Stimulus Package (PRIHATIN) Speech Text," Prime Minister's Office, Malaysia, accessed 20 April 2020, <https://www.pmo.gov.my/2020/03/speech-text-prihatin-esp/>.

<sup>11</sup> Aika Rey, "DOLE: P5,000 Cash Aid for Luzon Workers Affected by Lockdown," *Rappler*, 19 March 2020, <https://www.rappler.com/nation/254889-affected-luzon-workers-to-receive-aid-from-government>.

<sup>12</sup> "Insurers Persons Celebrate as Cabinet Approves Reduced Contributions for Section 39 and Increased Benefits for Section 33," News, Thailand Ministry of Labour, 1 April 2020, <https://www.mol.go.th/en/news/insurers-persons-celebrate-as-cabinet-approves-reduced-contributions-for-section-39-and-increased-benefits-for-section-33/>.

<sup>13</sup> "Cash Payout Scheme: Reference Questions and Answers," Financial-related Schemes, Our Business, The Treasury Branch of the Financial Services and the Treasury Bureau of the Government of the HKSAR, last modified 7 May 2020, <https://www.fstb.gov.hk/tb/en/cash-payout-scheme.htm>.

<sup>14</sup> "Fiscal Monitor," IMF Data, International Monetary Fund, last modified 8 May 2020, <https://data.imf.org/?sk=4BE0C9CB-272A-4667-8892-34B582B21BA6>.

<sup>15</sup> "DOF Says COVID-19 Emergency Subsidy Largest Social Protection Program in PHL History," News & Views, Department of Finance of the Philippines, 31 March 2020, <https://www.dof.gov.ph/dof-says-Covid-19-emergency-subsidy-largest-social-protection-program-in-phl-history/>.

badly needed support measures for their aviation industry, especially when they lack the resources to resort to the more blunt instrument of bailouts.

First of all, consumer protection law normally requires airlines to give refunds to passengers if they cancel flights for whatever reason. Relaxing this rule on a temporary basis can ease the financial burden on airlines without giving them direct financial support. Second, governments can relax regulatory rules that do not impact safety by, for example, extending validity periods for licenses, ratings, and endorsements; exercising flexibility in the delivery of classroom training and the completion of recurrent training requirements; and relaxing rules on airport slots. Third, prohibitions on anti-competitive agreements can be relaxed temporarily to allow several airlines to coordinate their schedules and consolidate routes to ensure that essential connectivity services remain in a period of weak demand.<sup>16</sup> Considering that these unusual circumstances could lead to more consolidations, especially between competitors, competition authorities can take a pragmatic approach to enforcing merger reviews. Merging parties can also invoke the “failing firm” defense, allowing competition authorities to approve otherwise problematic acquisitions. However, that defense requires a high burden of proof, and sufficient evidence may not be available to the parties in a short span of time. Competition authorities will need to adopt a more flexible approach to accommodate expediency without sacrificing evidential requirements.

Finally, governments might need to consider long-term solutions for airlines that need to attract long-term funding to finance costly capital requirements once they resume operations. Relaxing ownership restrictions will enable viable but financially weak airlines to attract additional capital elsewhere in case it is lacking in their domestic markets.<sup>17</sup> This possibility will be further discussed in section 4.

### 3. Nationalism: An Active Role for Governments?

Clearly, governments are taking a more active role in the airline industry during the Covid-19 slump. Governments’ responses are, to a large extent, based on nationalism, which has always had deep roots in the industry. Historically, airlines

<sup>16</sup> Norway has granted this relief to Norwegian Air and SAS for a period of three months. See Stephen Treloar, “Norway Temporarily Suspends Competition Regulation for Airlines,” *Bloomberg Law*, 18 March 2020, <https://news.bloomberglaw.com/mergers-and-antitrust/norway-temporarily-suspends-competition-regulation-for-airlines>.

<sup>17</sup> Malaysian Aviation Commission, *Commentary on Government Assistance to the Aviation Industry Amidst the COVID-19 Pandemic*, March 2020, <https://www.mavcom.my/wp-content/uploads/2020/03/200327-MAVCOM-Commentary-Government-Assistance-To-Aviation-Industry-Final.pdf>.

have played an important symbolic role in national identity, separate from the role of civil aviation in economic development:<sup>18</sup>

The development of an aviation industry . . . and the founding of national airlines all played their part in promoting a positive and technologically dynamic image of the state: an important means of enhancing national prestige and status. . . . Aeronautical progress was one means by which the state could demonstrate progress and achievement, a way of fostering and maintaining national pride.<sup>19</sup>

With national pride at stake, governments may be unwilling to let a national airline collapse on their watch. The biggest and oldest airline in each country is often named after its home country even though many of these airlines are not state-owned. Nationalism has therefore been a major reason why some governments have subsidized their failing flag carriers even before Covid-19.<sup>20</sup> Certainly, nationalistic sentiment is not the only reason why governments give their national airlines special treatment. Airlines often ensure connectivity, which is essential for the flow of goods and people, so governments cannot allow the industry to shut down. As the International Air Transport Association (IATA) noted, the “ability for airlines to be [catalysts] for economic activity will be vital in repairing the economic and social damage that Covid-19 is now causing.”<sup>21</sup>

Although it is understandable that governments would support the airline industry during the Covid-19 slump, they cannot sustain all airlines indefinitely. The means of support discussed in section 2 are short-term responses to prevent a liquidity crisis from shuttering the industry. However, from a long-term perspective, governments can consider owning airlines. It is important to recall that the airline industry has largely been in the process of privatization since 1980s. On the assumption that state ownership would lead to inefficiency and an inability to compete with private firms,<sup>22</sup> many international airlines were

<sup>18</sup> K. Raguraman, “Airlines as Instruments for Nation Building and National Identity: Case Study of Malaysia and Singapore,” *Journal of Transport Geography* 5, no. 4 (1997): 240, [https://doi.org/10.1016/S0966-6923\(97\)00021-5](https://doi.org/10.1016/S0966-6923(97)00021-5).

<sup>19</sup> Michael Paris, *From the Wright Brothers to Top Gun: Aviation, Nationalism, and Popular Cinema* (Manchester: Manchester University Press, 1995), 88.

<sup>20</sup> See, for example, Anusha Wickramasinghe, “Civil Aviation Industry in Sri Lanka: Challenges and Solutions,” in Jae Woon Lee ed., *Aviation Law and Policy in Asia: Smart Regulation in Liberalised Markets* (Leiden: Brill, 2020).

<sup>21</sup> See “IATA Thanks Governments for Support but More Need to Step Up,” Press Release, IATA, 24 March 2020, <https://www.iata.org/en/pressroom/pr/2020-03-24-02/>.

<sup>22</sup> See “Privatising the UK’s Nationalised Industries in the 1980s,” Case Study, Centre for Public Interest, 11 April 2016, <https://www.centreforpublicimpact.org/case-study/privatisation-uk-companies-1970s/>.



privatized. Although nationalism has never disappeared from the airline industry, the nationalization of airlines gradually became obsolete.

Covid-19 has revitalized the option of nationalization. For instance, Italy's government has already announced its decision to take over Alitalia.<sup>23</sup> It was also reported that France is considering nationalizing Air France in the face of the pandemic.<sup>24</sup> In Asia, the cash injection provided to Singapore Airlines should be a wake-up call for other governments. Singapore Airlines is de facto state-owned, so the injection of capital was straightforward and more bailout options were available.<sup>25</sup> If the market situation does not recover within the expected timeframe, other governments could follow suit by making this interventionist response to failing national airlines.

There is nothing unusual about governments wanting to protect their national airlines. Each time governments negotiate air services agreements with other states, they calculate what their national airlines stand to gain or lose.<sup>26</sup> The protectionism in aviation was well documented in the Jetstar Hong Kong Airways decision reached by Hong Kong's Air Transport Licensing Authority (ATLA) in 2015. When ATLA issued a decision rejecting Jetstar Hong Kong's license application, it explicitly stated that "countries are extremely reluctant to grant landing rights to foreign airlines as they have to protect the interests of their own national carriers."<sup>27</sup> In recent years, a number of countries have seemed increasingly willing to remove restrictions, thereby exposing national airlines to more competition.<sup>28</sup> Indeed, until 2020, the airline industry was largely in the process of liberalization, measured by the relaxation of market access and ownership and control requirements.<sup>29</sup>

Covid-19 and state financial aid could reinvigorate protectionism in the industry. It is worth recalling that the sharp global economic downturns of the 1930s and the early 1980s witnessed significant changes in government policies,

<sup>23</sup> "Worse than 9/11': Coronavirus Threatens Global Airline Industry," *Bangkok Post*, 18 March 2020, <https://www.bangkokpost.com/world/1881190/worse-than-9-11-coronavirus-threatens-global-airline-industry>.

<sup>24</sup> Laurence Frost and Anthony Deutsch, "Exclusive: Air France-KLM in Talks on Multibillion Euro State-backed Loan Package," *Reuters*, 3 April 2020, <https://www.reuters.com/article/us-health-coronavirus-airfrance-bailout-idUSKBN21L16F>.

<sup>25</sup> See "Singapore Airlines to Issue S\$5.3 Billion in New Equity and Raise up to S\$9.7 Billion via Mandatory Convertible Bonds," Singapore Airlines, March 2020, <https://www.singaporeair.com/saar5/pdf/Investor-Relations/Rights-Issue/NE-0720.pdf>.

<sup>26</sup> See Jae Woon Lee, *Regional Liberalization in International Air Transport: Towards Northeast Asian Open Skies* (Netherlands: Eleven International Publishing, 2016), 18–20.

<sup>27</sup> *ATLA Public Inquiry with Regard to the Application for Licence by Jetstar Hong Kong Airways Limited Written Decision*, Air Transport Licensing Authority of the HKSAR, June 2015, [https://www.thb.gov.hk/eng/boards/transport/air/Full%20written%20decision%20\(Eng\)%2025062015.pdf](https://www.thb.gov.hk/eng/boards/transport/air/Full%20written%20decision%20(Eng)%2025062015.pdf).

<sup>28</sup> UK Civil Aviation Authority, *CAP 769 Ownership and Control Liberalisation: A Discussion Paper* (London: The Statutory Office, 2006), ch. 4, at 4.

<sup>29</sup> See Lee, *Regional Liberalization in International Air Transport*, 1–11.

with governments choosing to increase discrimination against foreign companies.<sup>30</sup> As a severe recession was expected, governments could have been expected to take a protectionist approach. A more delicate problem lies in the pressure facing governments that become a shareholder of a national airline. Such governments are tempted to shield airlines in which they hold equity from competition to make those airlines profitable. Favouritism for state-owned airlines could lead governments to discriminate against foreign airlines as well as domestic airlines in which governments do not hold a share, thereby creating distortive effects on competition.

#### 4. Consolidation

Some airlines in Asia were already in trouble even before the crisis began. In 2019, Jet Airways, one of the largest carriers in India, collapsed and indefinitely suspended all its flights after running out of cash.<sup>31</sup> Three of the region's government-owned flag carriers (Air India, Malaysia Airlines, and Thai Airways) have not turned a profit in years, placing an increasing burden on taxpayers. Many governments are thus seriously questioning whether they still want to subsidize those perpetually loss-making enterprises.<sup>32</sup> Low-cost carriers were also showing signs of strain as they struggled to keep up with rising fuel costs amidst a heavily competitive market where ultra-low fares and overcapacity had become the norm.<sup>33</sup> As early as April 2020, with almost 80 per cent of the world's flights cancelled,<sup>34</sup> Covid-19 had claimed four casualties: Virgin Australia and Air Mauritius had entered into voluntary administration; South African Airways and Germanwings had discontinued operations.

<sup>30</sup> Simon J. Evenett, "Protectionism, State Discrimination, and International Business Since the Onset of the Global Financial Crisis," *Journal of International Business Policy* 2, no. 9-36 (2019): 16, <https://doi.org/10.1057/s42214-019-00021-0>.

<sup>31</sup> Rishi Iyengar, "How One of India's Biggest Airlines Imploded," *CNN Business*, 18 April 2019, <https://edition.cnn.com/2019/04/18/business/jet-airways-collapse-naresh-goyal/index.html>.

<sup>32</sup> Khairie Hisyam Aliman, "Cover Story: Clock Is Ticking for Malaysia Airlines," *The Edge Malaysia*, 7 November 2019, <https://www.theedgemarkets.com/article/cover-story-clock-ticking-malaysia-airlines>; Gary Leff, "Air India Could Be Forced to Shut Down in June," *View from the Wing*, 31 December 2019, <https://viewfromthewing.com/air-india-could-be-forced-to-shut-down-in-june/>; "THAI Told to Shape Up Before It Gets Government Financial Support," *Thai PBS World*, 5 May 2020, <https://www.thaipbsworld.com/thai-told-to-shape-up-before-it-gets-government-financial-support/>.

<sup>33</sup> Nik Martin, "Air Ticket Wars, Meager Profits for Asia's Budget Carriers," *Deutsche Welle*, 29 February 2019, <https://www.dw.com/en/air-ticket-wars-meager-profits-for-asias-budget-carriers/a-47605900>.

<sup>34</sup> Figure as of April 2020. Brian Pearce, "COVID-19 Updated Impact Assessment," IATA Economics, April 2020, <https://www.iata.org/en/iata-repository/publications/economic-reports/Covid-fourth-impact-assessment/>.

While airlines are making their best effort to survive, they are putting into place some drastic cost-cutting measures. Most airlines have asked their employees to work reduced hours, take a pay cut, or go on unpaid leave.<sup>35</sup> For some, sharp losses have left them with no choice but to terminate some of their employees.<sup>36</sup> For those already in trouble before the crisis, reorganization or restructuring might not be an option. Prolonged suspension of operations and a weak demand forecast could force them into bankruptcy or consolidation with other carriers.

In fact, the Asian aviation market was ripe for consolidation even before the Covid-19 crisis. Developments from the early days of the pandemic were anticipated to accelerate that process even further. However, it remained uncertain if competing airlines would pursue this immediately as a survival strategy or if it would take the form of bankrupt airlines being acquired by the survivors. The latter seemed more likely, but there was a significant barrier. Foreign ownership and control restrictions imposed by almost all countries in the region limits opportunities for cross-border acquisitions. Unlike most industries, foreign investors in airlines can only acquire a minority stake of up to 49 per cent of the company's equity. In some countries, it is even less.<sup>37</sup> This ownership restriction was responsible for the creation of the cross-border joint venture (JV) airlines that have boomed in Asia for the past ten years.<sup>38</sup> However, cross-border consolidation between two struggling airlines through the formation of a JV arrangement seemed less likely, as past experience had already shown that management conflicts can arise when foreign airlines partner with local ones.<sup>39</sup> For these reasons, consolidation between competing airlines might be limited to domestic markets, where the acquiring airline would be able to take a majority stake without any issue.<sup>40</sup>

<sup>35</sup> B.K. Sidhu, "Airlines Embark on Pay Cut Route to Stay Afloat," *The Star*, 11 March 2020, <https://www.thestar.com.my/business/business-news/2020/03/11/airlines-embark-on-pay-cut-route-to-stay-afloat>.

<sup>36</sup> Ralf Rivas, "Philippine Airlines Lays Off 300 Workers," *Rappler*, 29 February 2020, <https://www.rappler.com/business/252957-philippine-airlines-lays-off-workers-february-2020>.

<sup>37</sup> Michelle Dy, "Taking Air Transportation Out of 'Public Utility' Scope in the Philippine Constitution: A Panacea for Liberalization?," in Jae Woon Lee, ed., *Aviation Law and Policy in Asia: Smart Regulation in Liberalised Markets* (Leiden: Brill, 2020).

<sup>38</sup> "Cross-border Airline JV Model: Is There Still Room in Southeast Asia?," CAPA Centre for Aviation, 27 April 2018, <https://centreforaviation.com/analysis/reports/cross-border-airline-jv-model-is-there-still-room-in-southeast-asia-406747>.

<sup>39</sup> Jae Woon Lee and Seung Young Yoon, "Cross-Border Joint Venture Airlines in Asia: Corporate Governance Perspective," *European Business Organization Law Review* (2020): 1, <https://doi.org/10.1007/s40804-020-00175-y>.

<sup>40</sup> Rytis Beresnevicius, "Coronavirus Opportunities: Jeju Air Buys Eastar Jet on the Cheap," *News, AeroTime Hub*, 2 March 2020, <https://www.aerotime.aero/rytis.beresnevicius/24619-jeju-air-majority-equity-eastar-jet>.

Financially healthy airlines also had an opportunity to increase foreign ownership in other airlines without establishing a JV partnership. Over the years, Asian airlines have been investing in other airlines in the region whether for financial returns or strategic reasons.<sup>41</sup> Examples of this include All Nippon Airways' (ANA) acquisition of an 8.8 per cent stake in Vietnam Airlines in 2016 and a 9.5 per cent stake in Philippine Airlines in 2019.<sup>42</sup> Given the prospect of buying into a financially weak but commercially viable airline at a heavily discounted price, more acquisitions are possible, though nothing is certain. Tough economic conditions might limit airlines' appetite or capacity for acquisitions. In uncertain times, the more pressing concern for most airlines may be to survive with as much cash as possible to tide them over.

Consolidations driven by governments were also a means of providing financial assistance or maintaining connectivity.<sup>43</sup> This was more plausible in the short term because governments were the only entities that had the financial capacity or the appetite to inject capital into the airline industry during the crisis.<sup>44</sup> In Malaysia, for example, it was reported that the government was considering the merger of Malaysia Airlines, a full-service carrier, with AirAsia, a low-cost carrier.<sup>45</sup> The government has reportedly had this in mind since 2019, but Covid-19 made the situation even more pressing, prompting a senior Malaysian government official to comment that merging the two airlines was one of the options to "save" them.<sup>46</sup>

During the Covid-19 slump, governments had a chance to encourage consolidations that would create larger domestic airlines more capable of competing in international markets. Furthermore, governments could provide financial assistance to state-owned airlines for mergers between national airlines to create a "national champion." Indeed, the acquisition of other airlines by government-owned or -backed airlines was a feasible option, given the "bargain basement" opportunities. Nevertheless, Whish and Bailey warned that national champions, without the disciplining effect of competition in their domestic

<sup>41</sup> Ben Schlappig, "All Nippon Airways Will Buy a 9.5% Stake in Philippine Airlines at a Cost of \$95 Million," *One Mile at a Time*, 29 January 2019, <https://onemileatatime.com/all-nippon-airways-philippine-airlines-investment/>.

<sup>42</sup> Schlappig, "All Nippon Airways."

<sup>43</sup> On 6 May 2020, Argentina's government announced the merger of its flag carrier, Aerolíneas Argentinas, with its subsidiary, Austral. See "Aerolíneas Argentinas and Austral Announce Merger," *Buenos Aires Times*, 6 May 2020, <http://www.batimes.com.ar/news/economy/aerolineas-argentinas.phtml>.

<sup>44</sup> "Azmin: AirAsia, Malaysia Airlines Merger an Option," *The Star*, 18 April 2020, <https://www.thestar.com.my/business/business-news/2020/04/18/azmin-airasia-malaysia-airlines-merger-an-option>.

<sup>45</sup> "Khazanah Seeks Malaysia Airlines, AirAsia X Merger—Report," News, Ch-aviation, 1 October 2019, <https://www.ch-aviation.com/portal/news/81942-khazanah-seeks-malaysia-airlines-airasia-x-merger-report>.

<sup>46</sup> "Azmin: AirAsia, Malaysia Airlines Merger an Option."

markets, may have lacked the skills necessary to succeed in the international market.<sup>47</sup>

Government-driven consolidations also come with the risk that governments would adopt a more protectionist policy toward the airline industry. Just as with the nationalization of airlines, governments are tempted to shield those airlines from competition. This direction is likely since the failure of a government-led consolidation can be seen as a social loss for which the government is partially responsible. To lessen the risk of market distortions and maintain the competitiveness of the aviation industry, governments should first promote business-driven consolidations rather than putting the burden of bailing out airlines onto taxpayers' shoulders. This option allows for the more efficient use of capital and minimizes the risk of governments financially assisting airlines that were already doomed to fail. However, it will not be viable unless governments do away with the restrictions on foreign ownership and control of airlines.

## 5. Rationalization

In assessing the impact of Covid-19 on the airline industry, the fact that the aviation market in Asia has achieved unprecedented growth in the 2010s should not be neglected.<sup>48</sup> Increasing demand drove a significant growth of supply in terms of the number of airlines and the number of flights. Indeed, overcapacity is one of the long-standing problems of the Asian aviation market. Even before the pandemic, however, Asian economies were already faltering because of the US-China trade war and continued weakness in exports weighing down domestic demand.<sup>49</sup> The changes that Covid-19 brought directly or indirectly make rationalization in the airline industry inevitable. The key changes are as follows: lack of passenger confidence, decreased purchasing power, development of video-conferencing technology, stricter health screening for air travel, a higher value placed on social distancing, and greater consideration of airplanes' carbon emissions.

<sup>47</sup> Richard Whish and David Bailey, *Competition Law* (New York: Oxford University Press, 2018), 834.

<sup>48</sup> See "Final Report: Asia Pacific Commercial Air Transport: Current and Future Economic Benefits," InterVISTAS, December 2015, <https://www.iata.org/contentassets/5d4c3f78802248378497cc561ca019b0/intervistas-report-aspac-dec2015.pdf>.

<sup>49</sup> The International Monetary Fund's (IMF) growth forecast in January 2020 is 0.3 percentage points lower compared to the October 2019 IMF World Economic Outlook. See "Tentative Stabilization, Sluggish Recovery?," World Economic Outlook, International Monetary Fund, 20 January 2020, <https://www.imf.org/en/Publications/WEO/Issues/2020/01/20/weo-update-january2020>.

First, fear of contracting the virus has severely weakened passengers' confidence about flying. It was expected to take a long time before demand for flights started picking up again. Second, a worldwide decrease in economic activity was expected to plunge most countries into recession. Fewer jobs and lower salaries would mean that people spend less on discretionary items like leisure travel. Third, the experience of video conferencing during the Covid-19 lockdown made businesses and individuals rethink the necessity of travel, particularly for conferences, exhibitions, and business meetings. Many realized that although video conferences can never replace face-to-face meetings, they can supplement and reduce the need for those in-person meetings. After the Covid-19 pandemic, a good portion of business travel would be replaced by quickly improving video-conferencing technology. Fourth, governments took various actions to reduce the spread of Covid-19 through aviation and to protect the health of air travellers and aviation personnel.<sup>50</sup> Just as aviation security procedures changed after 9/11, new health-screening procedures would be implemented. Although it is a necessary step, these additional measures had the potential to reduce demand. Fifth, with the first four to five months of the Covid-19 outbreak, airlines were already implementing social distancing with new policies aimed at reducing the number of passengers on flights, including seat blocking and limiting potential contact between customers.<sup>51</sup> Since high density is the key to success in the airline business, reconciling these conflicting goals would be a challenge. Finally, with greater awareness of climate change, the "flight shaming" movement that encourages the use of less carbon-intensive means of transport had become common in Europe in 2019. In particular, short-haul flights in Europe came under attack since Europe has more transportation alternatives to commercial airlines, including high-speed rail.<sup>52</sup> The situation is not the same in Asia. In many cases, air travel is the only feasible means of transport. However, passengers' experience of and reflection on the Covid-19 crisis could make them change their travel plans for environmental reasons, with governments leading or following suit.

<sup>50</sup> "Aviation and COVID-19: State Actions," Security and Facilitation, ICAO, accessed 11 May 2020, <https://www.icao.int/Security/COVID-19/Pages/StateActions.aspx>.

<sup>51</sup> Thomas Pallini, "United Is Boarding Economy Passengers First and Business Class Last on All Flights to Promote Social Distancing," *Business Insider*, 1 May 2020, <https://www.businessinsider.com/united-boarding-economy-passengers-first-ensure-social-distancing-2020-5>.

<sup>52</sup> Angus Whitney, "How Coronavirus Will Forever Change Airlines and the Way We Fly," *Bloomberg*, 25 April 2020, <https://www.bloomberg.com/news/features/2020-04-24/coronavirus-travel-Covid-19-will-change-airlines-and-how-we-fly>.

## 6. Conclusion

While navigating the severe turbulence of the Covid-19 pandemic, fundamental changes are expected in the aviation market. In the past twenty years, liberalization, privatization, and globalization were the main factors driving the restructuring of the global aviation industry.<sup>53</sup> To some degree, Covid-19 is reversing that trend. A wide range of legal and policy changes are occurring in the aviation market. Most importantly, however, the three mega-trends we discussed in this chapter are transforming the airline industry.

Reinforced nationalism will present questions of fair competition. Fair competition has a legal basis in both national competition laws and international trade and service-related treaties. It is relatively straightforward that national competition authorities should take a pragmatic approach in tackling anti-competitive agreements, abuse of dominance, and merger control during these exceptional circumstances. However, a more complicated question is how to maintain a “level playing field” in the international aviation market. While airlines with strong government support, particularly flag carriers, will be able to survive or even grow in the Covid-19 slump, airlines that do not receive state aid will struggle to overcome the distortion caused by this unfair competition. This is a difficult problem because there is no legally binding international treaty regulating such state aid, no matter how unfair it may seem. Furthermore, administrative protectionism of state-owned or state-backed airlines against private airlines and foreign airlines can further distort the playing field.

Much-needed consolidation will require reform of ownership and control restrictions. Consolidation is necessary during the economic downturn. The experience of the EU single market shows that consolidation accelerated after the economic crisis in 2003.<sup>54</sup> Operating under strict ownership and control rules, governments have traditionally either provided state aid to collapsing or insolvent airlines or used heavy political pressure to induce local companies to take over the collapsed airlines.<sup>55</sup> If market demand remains depressed for long, however, it will be hard for governments to keep airlines from collapsing. That said, easing ownership and control rules could enable struggling airlines to attract the foreign investment that could enable them to survive. The Covid-19 crisis could be a strong catalyst for radically changing archaic ownership and control rules.

<sup>53</sup> “Liberalization of Air Carrier Ownership and Control,” ICAO Working Paper ATConf/6-WP/12 presented at the 6th meeting on Worldwide Air Transport Conference, Montreal, March 2013, [https://www.icao.int/Meetings/atconf6/Documents/WorkingPapers/ATConf6-wp012\\_en.pdf](https://www.icao.int/Meetings/atconf6/Documents/WorkingPapers/ATConf6-wp012_en.pdf).

<sup>54</sup> Guillaume Burghouwt, Pablo Mendes De Leon, and Jaap De Wit, “EU Air Transport Liberalisation Process, Impacts and Future Considerations” OECD, January 2015 (discussion paper).

<sup>55</sup> “Capacity: Hanging in the balance,” Flight Global, 16 February 2010, <https://www.flightglobal.com/capacity-hanging-in-the-balance/92015.article>.

Inevitable rationalization will also demand a reset of the way the airline industry has operated and has been governed. Within a matter of months, Covid-19 forced the industry to restructure, pushing governments to regulate the industry more sensibly. One important policy goal, though hardly the only one, should be reconciling the industry's sustainability with its responsibility for climate change. Every crisis is an opportunity. The pandemic provided an opportunity to review whether there are unnecessary "business as usual" rules in the airline industry that are in need of reform.





# Asian Trade and Supply Chain Linkages

*Dan Ciuriak\* and Philip Calvert\*\**

## 1. Introduction

The Covid-19 pandemic created the greatest global economic crisis since the Great Depression of the 1930s. It has also accelerated a number of trends at play in recent years which affect the economies of Asia, including the shift to digital business models and relocation for political or security reasons of manufacturing from less-expensive production facilities overseas closer to final customers (*reshoring* or *nearshoring*), and diversification of supply chains away from China.

The economics of reshoring are complex, however, and the unilateral policy interventions required to make reshoring viable (subsidies, export restrictions, and possibly tariffs) represent an erosion of the disciplines of the multilateral rules-based trading system, which in turn strengthens the case for Asian economic integration through regional trade agreements (RTAs).

As regards economic dependence on China, an issue explored in the subsequent chapter in this volume on Mongolia,<sup>1</sup> the increased impetus to decoupling along geopolitical divides paradoxically increases trade interdependence within Asia. The implied heightened political risk of increased export dependence on China may, however, be counterbalanced for Southeast Asian economies by firm-level risk management strategies for greater diversification and redundancy in supply chains.

This chapter begins with an overview of the impact of the Covid-19 pandemic on economies of Asia generally (section 2), before turning to its impact on supply chains specifically (section 3), using the medical equipment sector as a case study to illustrate the practical complexities (section 4). It goes on to consider the pandemic's implications for the multilateral trade system (section 5) and its impact on Asian economic integration and regionalism (section 6).

\* Distinguished Fellow, Asia Pacific Foundation of Canada.

\*\* Senior Research Fellow, Centre for Asia-Pacific Initiatives, University of Victoria.

<sup>1</sup> See Krusekopf and Jargalsaikhan, Chapter 28, this volume.

## 2. Covid-19 and Its Impact on Asian economies

Covid-19 has had a profound effect on global trade and economic growth. Overall economic losses in 2020 were estimated in mid-2020 to be on the order of –5 per cent of global GDP (or about USD 5 trillion), with the volume of world trade in goods and services declining by about 12–13 per cent. All regions were projected to suffer declines in trade volumes, with East Asia actually being the least hard hit.<sup>2</sup> Global trade in services, which accounted for USD 13.3 trillion in 2017, was hit particularly hard by border closures and other measures,<sup>3</sup> especially the international travel, tourism, education, and hospitality sectors, as well as air travel<sup>4</sup> and industries dependent on a ready supply of cross-border labour.<sup>5</sup> At the same time, digital trade likely saw an increase, at least in some modes.<sup>6</sup>

In Asia, the pandemic has sharply reduced the level of economic activity over and above the softening due to escalating China-US trade tensions and the associated bilateral tariff increases. As the first wave of the pandemic hit the region, Asian growth was projected to slow from 5.2 per cent in 2019 to 2.2 per cent in 2020 on an annual average basis, with the main source of drag being China. However, China quickly brought its outbreak under control and moved early to reboot its economy, putting it in a position to register positive growth in 2020. Meanwhile, elsewhere, economic activity tanked as the virus spread. By mid-year, the economic outlook for Asia showed steep declines in real GDP outside of China, led by Japan (–6.1 per cent) and India (–4.5 per cent), with trade-dependent Southeast Asia declining on the order of –2 per cent, despite relatively effective pandemic containment (e.g., in Vietnam).<sup>7</sup>

The economic impact on China was particularly important because of the size of its economy, its key role as an export market for Asian countries, and its centrality in global manufacturing and supply chains. China's 2020 growth was expected to drop from an initially projected 6.15–2.3 per cent, reflecting a year-over-year decline of 6.8 per cent in the first quarter and a recovery over the remaining three quarters.<sup>8</sup> China's experience with rebooting the economy

<sup>2</sup> “Trade set to plunge as COVID-19 pandemic upends global economy,” World Trade Organization, 8 April 2020, [https://www.wto.org/english/news\\_e/pres20\\_e/pr855\\_e.htm](https://www.wto.org/english/news_e/pres20_e/pr855_e.htm). UNCTAD. Global Trade Update (Geneva: UNCTAD, June 2020).

<sup>3</sup> See Neo and Lee, Chapter 6, this volume.

<sup>4</sup> See Lee and Dy, Chapter 26, this volume.

<sup>5</sup> Anirudh Shingal, “Services trade and COVID-19,” CEPR Policy Portal, *Vox*, 25 April 2020, <https://voxeu.org/article/services-trade-and-covid-19>.

<sup>6</sup> Dan Ciuriak, “Digital Trade in a Post-Pandemic Data-Driven Economy,” *World Pandemic Research Network*, WPRN-467252, 2020-07-03 at 10h01 (GMT), <https://wprn.org/item/467252>.

<sup>7</sup> IMF, *World Economic Outlook Update* (Washington DC: IMF, June 2020).

<sup>8</sup> Asian Development Bank, *Asian Development Outlook 2020*, at 20–21; International Monetary Fund, *Regional Economic Outlook: Asia and Pacific* (Washington, DC: International Monetary Fund, 2019), 3, 7.

underscored that the hoped-for V-shaped recovery was not likely in the cards, in good measure due to the lingering negative impacts on consumer confidence and household behaviour and the permanent closure of many small businesses whose existence was predicated on economic structures swept away by the pandemic (e.g., the changes to business districts due to the entrenchment of remote work).

One particular feature of the Covid-19 pandemic was its asynchronous impact on global health and economies. As the epicentre of the pandemic-driven economic shutdown moved from China to Europe, to North America, the BRICs (Brazil, Russia, India, and China) minus China, Latin America, and the Middle East and South Asia, these economies first faced a supply shock, which hit both the direct supply of final goods as well supply chain inputs. Companies ran down their inventories of inputs while scrambling to locate alternative sources but then progressively had to shut down production. A demand shock followed: as China came out of its lockdown, external demand for Chinese manufactures and inputs collapsed even as its domestic demand picked up. A second particular feature was Covid-19's primary impact on the service economy. A decline in this sector is unusual for postwar downturns, which were generally driven by demand cycles in durable goods and housing construction. Whereas goods-centred downturns typically featured a rebound strengthened by deferred consumption, there is no similar expectation for a services-centred downturn (e.g., daily visits to a coffee shop are not compensated post-lockdown by excess coffee consumption; two or three missed haircuts are made up by one; and so forth).

By the end of May 2020, there were many uncertainties about the evolution of the pandemic over the remainder of 2020 and through 2021 and the pandemic's economic consequences, given the possibility of a second wave of infections. A recovery and an end to the pandemic by the end of 2020 were thought to mean increased growth rates of as high as 6 per cent for some parts of Asia in 2021, but there remained a strong possibility that the health crisis would continue for much longer, with ongoing economic consequences despite the mitigation efforts of governments.<sup>9</sup>

### 3. Impact on Global Supply Chains

The Covid-19 pandemic brought into sharp focus the risk of supply chain disruption in extended global supply chains and the consequent importance of

<sup>9</sup> Tan and Wang, Chapter 25, this volume.

supply chain risk management.<sup>10</sup> Other such events in recent history, such as the 2011 Japan earthquake and tsunami, have also disrupted supply chains,<sup>11</sup> but the pandemic-induced shutdown in China had by far the biggest impact in terms of scale and duration. A March 2020 survey of US companies found that 75 per cent had reported supply chain disruptions, 62 per cent had experienced delays in receiving orders, 53 per cent had difficulty getting supply chain information from China, and 44 per cent had no plan in place to address the disruption.<sup>12</sup> Heightened awareness of supply chain risk prompted businesses to pay greater heed to supply chain resilience and robustness, and to consider strategies such as diversification and increased substitutability of inputs to reduce risk exposure.<sup>13</sup> Managers paid increased attention to dual or multiple sourcing for critical components, not only for upper-tier suppliers, but for lower-tier ones as well, whose inputs can also be critical.<sup>14</sup>

A major focus of supply chain reassessment is on China. Long before the pandemic hit, and even before US-China trade tensions led to punishing tariffs on US imports from China, rising Chinese labour costs had already shifted labour-intensive production to lower-cost sites such as Vietnam, Bangladesh, Cambodia, and East Africa. Companies preparing to take advantage of the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) intensified this shift, which at one point promised to substantially enhance Vietnam's access to the US market. Although the abrupt withdrawal in 2017 of the United States from that agreement undermined that rationale, the imposition of punitive US tariffs on imports from China shortly thereafter generated new reasons to relocate. By July 2019, it was reported that fifty global companies were considering or

<sup>10</sup> For a literature review of supply chain risk management, see William Ho et al., "Supply chain risk management: A literature review," *International Journal of Production Research* 53, no. 16 (2015): 5031–5069.

<sup>11</sup> Vasco M. Carvalho et al., "Supply chain disruptions: Evidence from the Great East Japan Earthquake," Columbia Business School, 2016, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2883800](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2883800); Hubert Escaith et al., "Japan's earthquake and tsunami: International trade and global supply chain impacts," CEPR Policy Portal, *Vox*, 28 April 2011, <https://voxeu.org/article/japans-earthquake-and-tsunami-global-supply-chain-impacts>.

<sup>12</sup> "COVID-19 Survey: Impacts on Global Supply Chains," Institute for Supply Management, 11 March 2020, [http://ism.files.cms-plus.com/ISMReport/ISM\\_Coronavirus%20Survey%20Release\\_3.11.20\\_FINAL.pdf](http://ism.files.cms-plus.com/ISMReport/ISM_Coronavirus%20Survey%20Release_3.11.20_FINAL.pdf).

<sup>13</sup> Christopher Findlay, Fukunari Kimura, and Shandre Thangavelu, "COVID-19 and the 'zoom' to new global value chains," East Asia Forum, 5 April 2020, <https://www.eastasiaforum.org/2020/04/05/covid-19-and-the-zoom-to-new-global-value-chains/>.

<sup>14</sup> Siva Chen, Forrest Chen, and Paul Liu, "COVID-19: Supply Chain Lessons from Asia," *Egon Zehnder*, 12 March 2020, <https://www.egonzehnder.com/functions/supply-chain-operations/insights/covid-19-supply-chain-lessons-from-asia>; Baker McKenzie, *Beyond COVID-19: Supply Chain Resilience Holds Key to Recovery* (online: Baker McKenzie, 2020), at 10; José Rojo Martín, "ADB to back non-Chinese solar manufacturing to strengthen Asia's ecosystem," *PV Tech*, 8 April 2020, <https://www.pv-tech.org/news/adb-may-back-non-chinese-solar-manufacturing-to-strengthen-asias-ecosystem>.

had announced plans to move some production out of China in response to the tariff measures.<sup>15</sup>

Southeast Asia appears to be the main beneficiary of the tariff-driven relocations. Sharp was reported to be considering moving a notebook plant to Vietnam, while HP and Bell were reportedly considering moving about 30 per cent of their China production to Southeast Asia.<sup>16</sup> Apple was calling on suppliers to consider moving 15–30 per cent of production in China to other locations, possibly Indonesia or Malaysia, and Google was reported to be working with partners in Vietnam to explore facilities to produce smartphones.<sup>17</sup> A 2019 survey of the fashion industry also indicated plans to reduce sourcing in China.<sup>18</sup>

Dual sourcing in supply chains creates additional opportunities for the rest of Asia, particularly countries in Southeast Asia, which have seen extensive growth in technological and logistical capacity as a result of participating in production networks. Some manufacturers of components for iPhones, including Wistron and Pegatron, apparently have plans to relocate some production outside China and into Southeast Asia and India.<sup>19</sup> Google and Microsoft are reported to be accelerating plans to shift some production of phones and PCs from China as well, focusing on Vietnam and Thailand.<sup>20</sup> For its part, India has announced a USD 6.6 billion subsidy program to attract manufacturing away from China, and Japan has announced a USD 2.2 billion subsidy program to support supply chain diversification by Japanese manufacturers.<sup>21</sup>

In terms of attracting relocation of supply chains from a pandemic risk management perspective, East Asian economies have a good story to tell, especially Vietnam and Taiwan, whose early and decisive responses to the pandemic have meant very low death rates and less economic disruption.<sup>22</sup> Cambodia and Laos

<sup>15</sup> Masamichi Hochi, Rei Nakafuji, and Yusho Cho, “China scrambles to stem manufacturing exodus as 50 companies leave,” *Nikkei Asian Review*, 18 July 2019, <https://asia.nikkei.com/Economy/Trade-war/China-scrambles-to-stem-manufacturing-exodus-as-50-companies-leave>.

<sup>16</sup> Hochi et al., “China scrambles.”

<sup>17</sup> Lauly Li and Cheng Ting-fang, “Apple weighs 15%–30% capacity shift out of China amid trade war,” *Nikkei Asian Review*, 19 June 2019, <https://asia.nikkei.com/Economy/Trade-war/Apple-weighs-15-30-capacity-shift-out-of-China-amid-trade-war>; Cheng Ting-fang and Lauly Li, “Google, Microsoft shift production from China faster due to virus,” *Nikkei Asian Review*, 26 February 2020, <https://asia.nikkei.com/Spotlight/Coronavirus/Google-Microsoft-shift-production-from-China-faster-due-to-virus>.

<sup>18</sup> Chen, “Supply Chain Lessons.” For more examples, see Mari Pangestu, “China–US trade War: an Indonesian perspective,” *China Economic Journal* 12, no. 2 (2019): 216–217.

<sup>19</sup> Jessica Snouwaert, “Coronavirus is pushing Apple’s iPhone makers to find new manufacturing frontiers outside of China,” *Business Insider*, 27 March 2020, <https://www.businessinsider.com/apple-iphone-manufacturers-look-outside-of-china-amid-coronavirus-2020-3>.

<sup>20</sup> Cheng Ting-fang and Lauly Li, “Google, Microsoft shift production from China faster due to virus,” *Nikkei Asian Review*, 26 February 2020, <https://asia.nikkei.com/Spotlight/Coronavirus/Google-Microsoft-shift-production-from-China-faster-due-to-virus>.

<sup>21</sup> Saheli Roy Choudhury, “India wants to be a ‘partner of the global economy’ in its manufacturing push, minister says,” *CNBC*, 5 June 2020.

<sup>22</sup> See Nguyen and Phan, Chapter 4, and Chang and Lin, Chapter 3, this volume.

have also had relatively effective responses, as of course has China. However, in the first half of 2020, South Asia and Indonesia had failed to contain the pandemic, weakening their credentials in this regard.

Diversification away from China, however, is not a simple matter. In the first instance, there is the issue of scale: China is about five times larger than all of ASEAN combined, which means that countries such as Vietnam that are already operating at a high capacity can only absorb so much additional transplanted economic activity. Second is the issue of supply chain complexity. A highly complex product like an automobile can have 20,000–30,000 individual parts. Supply chains are tiered, with the number of first-tier original equipment manufacturers (OEMs) running often into the hundreds. These OEMs in turn depend on a second-tier supply web of component manufacturers numbering in the thousands, which in turn depends on a third tier producing more basic inputs. It is one thing to take a factory out of China; it is another to replicate the supporting supply web. If a significant portion of the supply web remains in China, moving the factory incurs additional complications, such as transportation costs and time delays, and fails to insulate the company from a supply disruption in China. Nintendo ran into this problem when production of its consoles in Vietnam (which had moved from China in 2019) was interrupted because of a lack of key components from China.<sup>23</sup> Third, even when supply chains are less complex, finding and investing in new suppliers requires time, capital, and additional logistical and human resource capacity. Larger companies may have the resources to address these considerations and preserve and improve the resiliency of their supply chains, but smaller enterprises face a challenge. With the losses that have occurred as a result of the pandemic, smaller enterprises, already cash-strapped as a result of the crisis, will be hard-pressed to remain afloat.

Even if individual supply chains can be made more robust, a general catastrophic event such as the pandemic creates risk across many dimensions: manufacturing input may be interrupted as suppliers' factories shut down; labour movement may be limited due to quarantines; air freight may be disrupted, as passenger airlines, which carry some 50 per cent of global air freight, are cancelled. A company focused on its own supply chain would not be in a position to control for risks affecting its general operating environment. That said, China's neighbours, such as Thailand, with more advanced manufacturing capacity, could still benefit from dual or multiple sourcing and seek to increase

<sup>23</sup> Manisha Mirchandani, "Reducing Global Supply Chain Reliance on China Won't Be Easy," *GreenBiz*, 5 May 2020, <https://www.greenbiz.com/article/reducing-global-supply-chain-reliance-china-wont-be-easy>. See also further anecdotal evidence for these challenges in Dan Harris, "Would the Last Company Manufacturing in China Please Turn Off the Lights," *China Law Blog*, 25 February 2020, <https://www.chinalawblog.com/2020/02/would-the-last-company-manufacturing-in-china-please-turn-off-the-lights-part-4.html>.

their role in these restructured supply chains. Moving away from single sourcing to dual or multiple sourcing, even on a smaller scale than in China, provides an opportunity for companies in other Asian countries to provide increasingly advanced technological input into these chains. For industries such as textiles and garments, which remain resistant to extensive automation and therefore rely on a large pool of low-cost labour, an accelerated shift in production to Southeast and South Asia may lead to a more-or-less complete replacement of China in these sectors, similar to the earlier shift of labour-intensive production out of Japan which gave rise to the “flying geese” paradigm of Asian industrial development in which the most advanced economy progressively shifts lower-value-added production to trailing economies as it moves up the value chain.<sup>24</sup>

#### 4. Supply Chain Risk and the Medical Equipment Sector

The complex economic implications of the pandemic for supply chains in Asia and reshoring of production is evident in the medical equipment sector. While the shortages of face masks and personal protection equipment that emerged in the early panic-buying led to increased pressure for strategic reshoring of these essential goods, economic analysis shows that strategically driven reshoring would be both costly and ineffective.

The vulnerabilities in supply chains and the possibility of further widespread supply chain breakdowns do not necessarily call for self-sufficiency in production. Self-sufficiency would be practically impossible for most smaller countries and highly inefficient even for larger states, given the excess capacity that would have to be maintained and the hesitation on the part of producers to ramp up production based on uncertainty future demand. Indeed, as the present pandemic was erupting, the largest US manufacturer of surgical masks was hesitant to increase production because of “the boom-bust mess that occurred after the swine flu pandemic in 2009.”<sup>25</sup> Instead, maintaining adequate strategic reserves is a more effective way of coping with possible infectious disease outbreaks, natural disasters, and other public health crises.

Moreover, quantitative assessments of supply chain propagation of shocks show that re-nationalization of supply chains does not mitigate the economic shock of a pandemic nor does it reduce economic risk. One model shows an average real GDP decline due to the pandemic shock of –31.5 per cent, of

<sup>24</sup> Kaname Akamatsu, “A historical pattern of economic growth in developing countries,” *Journal of Development Economics* 1, no. 1 (1962): 3.

<sup>25</sup> Lena H. Sun and Rachel Siegel, “As demand spikes for medical equipment, this Texas manufacturer is caught in coronavirus’s supply chain panic,” *Washington Post*, 15 February 2020, <https://www.washingtonpost.com/business/2020/02/15/coronavirus-mask-shortage-texas-manufacturing/>.



which –10.7 per cent (or about one-third) is due to transmission through supply chains, while in a world with re-nationalized supply chains, the average GDP decline would have been even larger at –32.3 per cent.<sup>26</sup> This decline reflects the fact that eliminating reliance on foreign inputs increases reliance on domestic inputs, which may also be subject to lockdowns. So “whether renationalizing supply chains insulates a country from the pandemic depends on whether it plans to impose a more or less stringent lockdown than its trading partners.”<sup>27</sup>

For most smaller economies, there is little that can be done to prevent a decline in output roughly commensurate with the decline in their major trading partners. Accordingly, all policy focus should be on dealing with the health emergency and preventing permanent damage to the production system pending the restoration of global demand. The critical longer-term consideration is resilience, the ability to bounce back after the shock. In this regard, distributed production networks are likely to be more resilient and better able to rapidly ramp up production than nationalized systems.<sup>28</sup> At the same time, the supply of essential medical equipment, including personal protective equipment, ventilators, medicines, and related goods must be robust. Robustness requires redundancy in supply chains and sufficient diversification of production within networks to withstand a general shutdown in one location.<sup>29</sup>

While firm-level responses in managing supply chain risks are likely to naturally result in an increase in robustness of production systems, there is also likely to be some policy-driven reduction in reliance on trade. Preliminary evidence indicates that essential goods tend to be less traded than non-essential goods.<sup>30</sup> These patterns result from protection for domestic production as governments implicitly hedge their bets and opt to support domestic production, even at an efficiency cost: “while higher trade barriers on essential goods may reduce the amount of these goods consumed in steady-state, they mitigate

<sup>26</sup> Barthélémy Bonadio et al., “Supply Chains in the Pandemic,” NBER Working Paper No. 27224, May 2020; Dan Ciuriak, “The Policy Response to the Coronavirus Pandemic: Recommendations for Canada,” Centre for International Governance Innovation, Opinion, 26 March 2020.

<sup>27</sup> Bonadio et al., “Supply Chains,” at 2.

<sup>28</sup> Sébastien Miroudot, “Resilience versus robustness in global supply chains: Some policy implications,” in Richard Baldwin and Simon Evenett eds., *COVID-19 and Trade Policy: Why Turning Inward Won't Work* (CEPR Press, April 2020).

<sup>29</sup> See, for example, the adjustments made by Japanese auto firms to diversify their sourcing following the 2011 earthquake: Petr Matous and Yasuyuki Todo, “Analyzing the coevolution of interorganizational networks and organizational performance: Automakers’ production networks in Japan,” *Applied Network Science*, vol. 2, no. 5 (2017).

<sup>30</sup> Fernando Leibovici and Ana Maria Santacreu, “International Trade of Essential Goods During a Pandemic,” Federal Reserve Bank of St. Louis, 2020, <https://research.stlouisfed.org/wp/more/2020-010>.

**Table 1** EU and US imports of essential medical goods, by source country, USD ('000), average 2017–2019

Source Country	Imports of Essential Medical Goods from Source Country	Total Imports from Source Country	Essential Imports as Share of Total	Essential Imports from Source Country as Share of Essential Medical Imports from World
<b>European Union</b>				
China	34,529,207	533,180,914	6.48%	5.48%
Hong Kong	458,011	10,038,675	4.56%	0.07%
Taiwan	1,953,487	38,657,539	5.05%	0.31%
Japan	10,893,223	97,907,798	11.13%	1.73%
Korea	6,763,521	64,986,329	10.41%	1.07%
ASEAN	14,397,170	180,933,542	7.96%	2.28%
World	630,670,111	6,141,651,516	10.27%	
<b>United States</b>				
China	35,993,251	520,503,013	6.92%	13.49%
Hong Kong	211,351	6,258,951	3.38%	0.08%
Taiwan	2,763,692	49,043,034	5.64%	1.04%
Japan	12,477,898	144,203,687	8.65%	4.68%
Korea	5,304,828	76,535,236	6.93%	1.99%
ASEAN	15,098,790	193,098,943	7.82%	5.66%
World	266,892,128	2,529,046,054	10.55%	

*Source:* International Trade Centre Trade Map; calculations by the authors. *Essential medical goods* defined as in Leibovici and Santacreu (2020). Note: EU imports from the world include intra-EU imports.

the potential vulnerability of net importers of these goods when a global pandemic hits.”<sup>31</sup>

How big would an adjustment to trade in medical goods be? Table 1 shows the share of imports of essential medical goods<sup>32</sup> by the European Union and the United States from the East Asian source countries over the period 2017–2019

<sup>31</sup> Leibovici and Santacreu, “International Trade.”

<sup>32</sup> As defined by Leibovici and Santacreu, “International Trade.”

amounted to about 5.5 per cent and 13.5 per cent of total imports from the world of these goods, respectively. While the US share of imports from China is relatively high, it remains a relatively small share in a global context. Any reduction of global trade for hedging against future vulnerabilities would be a fraction of these percentages. The efficiency costs of such a marginal reduction would be even smaller. Accordingly, a reduction of trade for legitimate risk-reduction reasons would not make a significant contribution to any larger decoupling driven by geopolitical objectives and rationales.

## **5. Impact on the Rules-based Multilateral System and Implications for Asia**

Having studied the impact of the pandemic on supply chains and the complex economic logic of the reshoring of medical supplies, we return to the broader context of global and regional trade within which supply chains operate. The Covid-19 pandemic emerged at a time of growing uncertainty for the rules-based international trading system. The global response to the public health crisis only adds to these pressures.<sup>33</sup> Globalization has already been subject to criticism, in part because of the failure to better distribute the increased wealth it generates.<sup>34</sup> Meanwhile leaders in all parts of the world have stoked nationalist, nativist, and protectionist sentiments for their political gain.

These concerns and developments have increased the pressure on the World Trade Organization (WTO), the lynchpin of the multilateral trade system. The United States has waxed and waned in its criticisms of the WTO over the years, but the Trump administration has approached the organization and its rules with outright hostility. It has hamstrung the WTO's dispute settlement process by refusing to appoint judges to its Appellate Body and has applied unilateral tariffs against China and other trading partners for political ends. A number of trading partners have retaliated with their own tariffs on US products. The United States has also dismissed as "invalid" an Appellate Body decision that went against it in a dispute with Canada, the first time a WTO member has taken such a stance.<sup>35</sup> Despite an interim replacement for the Appellate Body having been put in place, the future of the system and its ability to mediate the

<sup>33</sup> See, for example, Chad P. Bown, "COVID-19 Could Bring Down the Trading System," *Foreign Affairs*, 28 April 2020, <https://www.foreignaffairs.com/articles/united-states/2020-04-28/covid-19-could-bring-down-trading-system>.

<sup>34</sup> See Lansdowne and Lawson, Chapter 30, this volume, for some of these distributive justice concerns, as they relate to supply chains and migrant labour.

<sup>35</sup> "United States – Countervailing Measures on Supercalendered Paper from Canada: Communication from the United States," World Trade Organization, WT/DS505/12, 17 April 2020.

tensions in the trading system is increasingly uncertain. As well, there remain unresolved issues with China's economic practices, including nationalistic industrial development policies, a regulatory system that does not meet WTO standards for transparency and predictability, and the use of trade measures as a form of political retaliation<sup>36</sup>. Perhaps of most concern is the extraordinarily expansive use of "national security" to justify restrictive trade and investment measures.<sup>37</sup>

In this context, the Covid-19 pandemic could present an additional challenge to the system. Many countries have put in place trade-restrictive border measures aimed at safeguarding the health and food security of their populations. As of early April 2020, eighty countries, including most of Asia, had put in place emergency export restrictions, particularly for medical equipment and products related to protection from the virus, along with some restrictions on pharmaceuticals—despite the questionable basis for doing so, described in the previous part of the chapter. Some jurisdictions, such as Japan, Korea, and Taiwan, coupled these restrictions with a temporary elimination of import tariffs on these products to further ensure domestic supply.<sup>38</sup> Other countries—Cambodia, Vietnam, and India, for example—also introduced restrictions on exports of food, primarily rice, leading to rising food prices in the region and concern about regional food security on the part of ASEAN leaders.<sup>39</sup>

Temporary export restrictions to relieve critical shortages of foodstuffs or essential products do not contravene WTO rules and directions, as long as they follow notification procedures and take food security into consideration.<sup>40</sup> The WTO, however, has expressed concerns that such measures undermine much-needed international cooperation in ensuring supplies reach where they are

<sup>36</sup> See, for example, Mark Godfrey, "Norwegian salmon exporters feel China's wrath," *Seafood Source*, 28 May 2012; Steven Chase, "Canadian canola seed exports to China still facing obstacles, industry says," *The Globe and Mail*, 31 March 2020; and Sasidaran Gopalan, Luu Nguyen Trieu Duong, and Ramkishan S. Rajan, "Trade configurations in Asia: Assessing de facto and de jure regionalism," *The World Economy* 43, Issue 4 (April 2020): 1039.

<sup>37</sup> See, for example, Stephen Kho and Thor Petersen, "Turning the Tables: The United States, China, and the WTO National Security Exception," *China Business Review*, 16 August 2019.

<sup>38</sup> "COVID-19: Trade and Trade-Related Measures," World Trade Organization, 4 May 2020, [https://www.wto.org/english/tratop\\_e/covid19\\_e/trade\\_related\\_goods\\_measure\\_e.htm](https://www.wto.org/english/tratop_e/covid19_e/trade_related_goods_measure_e.htm).

<sup>39</sup> Timothy Sulser and Shahnila Dunston, "COVID-19-related trade restrictions on rice and wheat could drive up prices and increase hunger," International Food Policy Research Institute, 15 May 2020, <https://www.ifpri.org/blog/covid-19-related-trade-restrictions-rice-and-wheat-could-drive-prices-and-increase-hunger>; Pearly Neo, "'Can't fight COVID-19 alone': ASEAN leaders call for urgent collaboration in food security and open trade," *Foodnavigator-asia.com*, 27 April 2020, <https://www.foodnavigator-asia.com/Article/2020/04/27/Can-t-fight-COVID-19-alone-ASEAN-leaders-call-for-urgent-collaboration-in-food-security-and-open-trade>.

<sup>40</sup> Joost Pauwelyn, "Export Restrictions in Times of Pandemic: Options and Limits under International Trade Agreements," in *COVID-19 and Trade Policy: Why Turning Inward Won't Work* (London: CEPR Press, 2020), at 103–109.

urgently needed and encourage smuggling; moreover, since these restrictions lack transparency, they limit the capacity of importers and exporters to adapt to quickly shifting circumstances.<sup>41</sup>

The extensive use of export restrictions also increases the political pressure on governments to consider resorting to reshoring. Advanced manufacturing and robotics have made it economically feasible in some cases for firms to move production into higher-cost countries while remaining competitive; examples include moves by Foxconn and Adidas to open new manufacturing facilities in the United States and Germany.<sup>42</sup> But if reshoring follows a strategic or political objective, subsidies or protective tariffs are likely to be needed given that the policy may not be economically rational. For example, in China, Taiwan, and Korea, the governments have inserted themselves into the manufacturing of medical supplies using various fiscal measures: China uses tax incentives and official control over export decisions; Taiwan purchases machinery that is then turned over to manufacturers when they reach a certain level of production; and the Korean government forms partnerships with manufacturers to support and closely monitor production and distribution.<sup>43</sup> The legitimacy of such government interventions under existing WTO rules is, however, an open question.

As countries come out of lockdown and start reopening their own industries, there is also a potential threat of them putting in place import tariffs or restrictions to protect domestic industries as they struggle to get back to full capacity. Under WTO Agreement on Safeguards, a country can impose import tariffs beyond their WTO commitments under specific circumstances, such as a sudden surge of imports that have caused or threaten to cause serious injury to the importing domestic industry of the importing country. The risk is that such measures—import or export restrictions or restrictions on the movement of people—become permanent despite WTO rules, with Covid-19 invoked as the excuse. Such non-negotiation derogations would tend to erode the value of the rules-based system.

<sup>41</sup> “Export Prohibitions and Restrictions,” World Trade Organization, 23 April 2020, at 1, [https://www.wto.org/english/tratop\\_e/covid19\\_e/export\\_prohibitions\\_report\\_e.pdf](https://www.wto.org/english/tratop_e/covid19_e/export_prohibitions_report_e.pdf); “Transparency – Why It Matters in Time of Crisis,” World Trade Organization, 7 April 2020, at 1, [https://www.wto.org/english/tratop\\_e/covid19\\_e/transparency\\_report\\_e.pdf](https://www.wto.org/english/tratop_e/covid19_e/transparency_report_e.pdf).

<sup>42</sup> Satoshi Inomata and Daria Taglioni, “Technological progress, diffusion, and opportunities for developing countries: lessons from China,” in *Global Value Chain Development Report 2019: Technological Innovation, Supply Chain Trade, and Workers in a Globalized World* (Geneva: World Trade Organization, 2019).

<sup>43</sup> Isaac Lo, “Carrots, Sticks, and Masks: The Control of Medical Supply Chains in East Asia,” Asia Pacific Foundation of Canada, 30 April 2020, <https://www.asiapacific.ca/publication/carrots-sticks-and-masks-control-medical-supply-chains-east>.

## 6. Asian Economic Integration and Regionalism

For Asia, a weakened WTO and the US-China trade war may lead to a greater focus on RTAs. Asia's role in the global economy has increased substantially over the past two decades, accounting for about 35 per cent of global nominal GDP (in US dollars), 38 per cent of global exports, and 31 per cent of global imports.<sup>44</sup> Over the same period, economic integration in East Asia has also moved forward. This integration was driven first by Japan (in the 1980s and 1990s) and more recently by the expanding role of China in regional production networks since its entry into the WTO. Asian supply chains have become increasingly intra-regional compared with those in North America and Europe: 60 per cent of trade in Asia is now within the region.<sup>45</sup>

There are indications of an accelerated shift in trade patterns as a result of the China-US trade war and Covid-19 to more intra-regional trade. In 2019, China's exports to ASEAN surged ahead, growing by over 16 per cent with Vietnam and Singapore, and the ASEAN region became China's second-largest trading partner. In 2020, contraction in EU economies meant that ASEAN became China's top trading partner, partly driven by ASEAN exports of electronic goods, notably circuit boards. Some of these changes might be attributed to increased integration, but as the EU economies bounce back, the European Union is likely to eclipse ASEAN as China's trading partner. Increased Chinese exports might reflect the ability of Chinese manufacturers to evade US tariffs and WTO rules of origin by shipping their products through countries such as Vietnam. As of May 2020, it was not clear how much these changes indicated a sustained shift toward greater integration and intra-regional trade.<sup>46</sup>

Intra-regional trade has been substantially boosted by trade policy. Asia's RTAs account for about one-third of global agreements; over 150 free trade agreements are in force in the region.<sup>47</sup> These include the ASEAN Economic Partnership Agreement; the web of ASEAN+1 agreements; and the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), an eleven-member agreement which includes Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New

<sup>44</sup> Gopalan et al., "Trade configurations," 1034–1035.

<sup>45</sup> Xin Li, Bo Meng, and Zhi Wang, "Recent patterns of global production and GVC participation," in *Global Value Chain Development Report 2019: Technological Innovation, Supply Chain Trade, and Workers in a Globalized World* (Geneva: World Trade Organization, 2019), at 20; Gopalan et al., "Trade configurations," 1034.

<sup>46</sup> Issaka Harada and Kyo Kitazume, "China turned to ASEAN to cover US trade dip," *Nikkei Asian Review*, 14 January 2020; "ASEAN Overtakes EU to Become China's Top Trading Partner in Q1 2020," ASEAN Briefing, Dezan Shira and Associates, 15 May 2020.

<sup>47</sup> UNCTAD, "Trade Structure by Partner," *2019 e-Handbook of Statistics*, 10 December 2019, <https://stats.unctad.org/handbook/MerchandiseTrade/ByPartner.html>; Amelia U. Santos-Paulino, "The Asian Economic Integration Cooperation Agreement: lessons for economic and social development" (Geneva: UNCTADm 2017), at 4–6.

Zealand, Peru, Singapore, and Vietnam. The region is in the process of negotiating the formally ASEAN-led (and China-promoted) Regional Comprehensive Economic Partnership (RCEP), which, if signed, would cover around 30 per cent of global GDP and 25 per cent of global exports and in which there remains significant potential for increasing intra-regional trade among RCEP countries.<sup>48</sup>

These agreements differ in their coverage and depth of obligations. RCEP, in particular, has been criticized for its lack of ambition in tariff reductions, compared with the CPTPP, and for its weaker rules on services, investment, and standards. These criticisms are technically valid but miss the larger point that agreements such as RCEP, and the more ambitious CPTPP, have a geopolitical role. RCEP is widely considered as consolidating China's economic influence through enhanced trade flows. The CPTPP, at present led by Japan, is conversely seen as counterbalancing China's weight in the region and promoting trade rules based on the previously US-championed model. ASEAN, meanwhile, is seen as supporting cohesion in the region through economic integration at a time when political cohesion is fraying.

The various high-level meetings occasioned by these regional arrangements provide opportunities for relationship-building and diffusing trade frictions. Their limited sizes make them nimble. These factors and the political expediency suggest their durability at a time when global institutions falter. The long-term result for Asia, then, may be a much more central role for these agreements and organizations and further decline in the importance of the WTO.

## 7. Conclusion

It will take years to assess the full economic impact of Covid-19, but from early on it was clear that it was accelerating some key trends. The pandemic increased the robustness of supply chains through diversification away from excessive dependence on China and into Southeast and South Asia, in an incremental rather than revolutionary way; no wholesale departure from manufacturing in China was anticipated. Even in the high-profile context of medical equipment supply chains during the pandemic, increasing pressure to reshore production for strategic reasons, such measures were likely to be costly and ineffective. For most countries, the most efficient response was to continue to rely on international trade and global production networks, which have proved efficient and resilient

<sup>48</sup> Santos-Paulino, *The Asian Economic Integration*, 4; Dipijan Roy Chaudhury, "RCEP urges India to return to negotiating table as Covid-19 wrecks economies," *Economic Times*, 23 April 2020; Gopalan et al., "Trade configurations," 1054.

during the crisis, while addressing the strategic concerns through improved emergency-preparedness stockpiles.

The increased pressure for reshoring, however, is part of a larger disaffection with globalization and the erosion of the rules-based international trade system. In response to this decline and in the face of US hostility to the WTO regime, export-dependent countries in Asia are likely to increase the pace of regional integration, supported by RTAs such as the CPTPP and RCEP. While these developments may lead to increasing dependence on China and Japan on the part of smaller countries in the region, supply chain diversification, with more production for North America and Europe taking place in Southeast Asia, is likely to ameliorate such dependence and stimulate technological and economic developments in the region.





# Mongolia: After Successful Containment, Challenges Remain

*Charles Krusekopf\* and Mendee Jargalsaikhan\*\**

## 1. Introduction

Mongolia was highly successful in containing Covid-19 and preventing community outbreaks. Despite its close trade and travel links to China, South Korea, and Russia, as of mid-June 2020, the country had recorded fewer than 200 cases, all linked to travel outside the country with no community spread. Mongolia worked closely and successfully with neighbouring countries and international organizations such as the World Health Organization (WHO) to develop and implement public health measures and testing. It was one of the first countries to close its borders. Quick and successful actions by the government to shut schools and businesses, restrict social gatherings, and ban international arrivals allowed the country to self-isolate and avoid a larger outbreak. This self-isolation, however, presents challenges in maintaining economic functioning as the country is highly dependent on imports of many consumer products and exports of natural resources. In May 2020, the country started to move ahead with plans to reopen some businesses; trade with China started to resume to allow the export of key commodities such as coal and copper, but longer-term challenges remained due to high internal and external debt levels, continued international travel and trade restrictions, and the global economic slowdown. Mongolia's close proximity to China, and China's relatively quick rebound due to its own success in combatting Covid-19, offers hope that Mongolia's economic crisis will ease. However, the lack of alternative markets and sources of finance outside of China as countries come to terms with the Covid-19 economic ramifications will hinder Mongolia from achieving its long-held goals of reducing its dependence on its southern neighbour and diversifying its economic and political relations.

\* Professor, School of Business, Royal Roads University.

\*\* Post-Graduate Research Scholar, Asia Pacific Foundation of Canada, Vancouver, Canada.

## 2. Background: The Emergence of Covid-19 in Mongolia

Mongolia's early actions and relatively limited connections with the outside world helped it avoid importing the disease into the country. Mongolia began working with the WHO on 10 January 2020, and by 24 January the Mongolian government empowered a State Emergency Commission, an inter-agency emergency management body led by the deputy prime minister and supported by the National Emergency Management Agency (NEMA), to lead its Covid-19 response.<sup>1</sup> Mongolia is completely surrounded by China to the south and Russia to the north. The country has only one international airport and limited international air connections, especially in winter. Travel to and from China was closed from 24 to 27 January during the Chinese Lunar New Year, and when border crossing points reopened on 28 January, inter-agency teams were in place to conduct health screening, including temperature checks, testing, and isolation measures pending test results.<sup>2</sup>

More than 90 per cent of Mongolia's exports, primarily coal and copper, are driven across the Chinese border in trucks. Approximately 10,000 Mongolian truck drivers regularly deliver raw materials to the Chinese border, where they are transferred to Chinese control. While there are thirteen official border crossings, most occur at only a few locations, which allowed officials to better screen drivers and passengers. International arrivals in Mongolia are typically slow in winter, due to intensely cold weather that limits tourism and business projects outside major towns. Mongolia, China, and Russia are linked by a single rail line, the Trans-Mongolian train, which passes north-south through Mongolia and links to the Russian Trans-Siberian rail line. A number of trains and trucks pass through Mongolia carrying cargo between China and Russia, but the country has a limited number of transit travellers, mainly those riding the Trans-Mongolian train from China to Russia.

Mongolia blocked air travel with China on 1 February, and on 15 February Mongolia completely prohibited transit passengers from passing through the country when Russia announced it was closing its borders to foreign travellers.<sup>3</sup> Flights from South Korea were halted on 24 February, those from Japan were halted on 28 February, and all other international flights from Russia, Germany, and Turkey were halted on 11 March.<sup>4</sup> After that date, the only flights were

<sup>1</sup> The Minutes of the State Emergency Commission of Mongolia, 24 January 2020, <https://nema.gov.mn/wp-content/uploads/2020/01/УОК-ын-хурлын-тэмдэглэл.01.26.pdf>.

<sup>2</sup> Mendee Jargalsaikhan, "Mongolia's Effective 'Analogue' Approach to COVID-19 Containment," Asia Pacific Foundation of Canada, 21 April 2020, <https://www.asiapacific.ca/publication/mongolias-effective-analogue-approach-covid-19-containment>.

<sup>3</sup> Sainbuyan Munkhbat, "Mongolia's Challenges in Returning Nationals Stranded Abroad During COVID-19," Asia Pacific Foundation of Canada, 5 May 2020, <https://www.asiapacific.ca/publication/mongolias-challenges-returning-nationals-stranded-abroad>.

<sup>4</sup> Munkhbat, "Mongolia's Challenges."

repatriation flights for Mongolian nationals living abroad, and the land borders to China and Russia remained closed to all international travellers. Mongolia was on track to begin a partial opening to foreign travellers as of 1 June, but mandatory requirements for quarantine and self-isolation were expected to remain in effect.<sup>5</sup>

The Mongolian government acted quickly to isolate the country because of limited healthcare resources and special health challenges. While the country has a fairly well-developed public health system as a legacy of its socialist past, it has limited resources in terms of critical care beds, specialized equipment, and training. The government recognized that the health system could be easily overwhelmed with the pandemic outbreak, and the country faced several public health challenges that raised concerns. Ulaanbaatar, the capital and only major city, has grown rapidly and is now home to half of the country's population of 3 million, with many people living in "ger" districts that lack running water and sanitation (gers are traditional Mongolian tents used for housing in both rural and urban areas). The uncontrolled burning of coal for heat in winter created severe air pollution problems, with Ulaanbaatar regularly rated among the worst cities in the world in terms of air quality. In contrast, the rest of Mongolia's population was sparsely populated in rural areas but isolated away from central medical facilities.

The first Covid-19 case in Mongolia was registered on 10 March, a French worker who entered the country on 2 March on a flight from Europe. Following this incident, Mongolia required anyone entering Mongolia from abroad, both foreigners and returning citizens, to spend initially fourteen days and later twenty-one days in compulsory isolation, followed by fourteen days of self-monitored homestay.

All of the approximately 180 cases of Covid-19 in Mongolia at the end of May have been associated with travel outside Mongolia, primarily in Russia. Mongolia recorded its largest jump in cases from 13 to 15 May when fifty-five military cadets who returned from training in Russia and thirty-seven Mongolian citizens returning from Russia tested positive.<sup>6</sup> Approximately 10,000 tests had been administered by end of May, mainly among the 3,500 citizens repatriated by air and 5,500 citizens who returned to Mongolia through the land borders from China and Russia.<sup>7</sup> No persons in Mongolia were reported to have died due to complications from Covid-19.

<sup>5</sup> The Minutes of the State Emergency Commission of Mongolia, 28 April 2020, <https://nema.gov.mn/wp-content/uploads/2020/04/УОК-ЫН-2020-ОНЫ-20-Р-ХУРЛЫН-ТЭМДЭГЛЭЛ.pdf>.

<sup>6</sup> T. Baljmaa, "Mongolia's COVID-19 cases reach 135, all imported from abroad," *Montsame*, 16 May 2020, <https://montsame.mn/en/read/225420>.

<sup>7</sup> A. Munkhzul, "Mongolia ranks 2nd in percentage of population repatriated from abroad," *Montsame*, 16 May 2020, <https://www.montsame.mn/en/read/226743>.

Because of the lack of community spread in Mongolia, many of the initial restrictions that were put in place began to be relaxed in April. As of 1 May, gyms, holiday resorts, swimming pools, hotels, and other enterprises were allowed to reopen as long as they met strict rules for disinfection and social distancing.<sup>8</sup> However, despite the relative freedom of movement and activity within Mongolia, the country's external borders remained closed. In late May, Prime Minister Khurelsukh Ukhnaa announced that all international flights would be banned through 30 June at a minimum and that "the country [would] keep the quarantine rules until a vaccine [became] available."<sup>9</sup> Mongolia achieved success in preventing community spread of Covid-19, but the isolation that led to that success also limited the country's ability to reopen its economy and society to the wider world.

### 3. Centralized, Phased Emergency Responses

Mongolia's legal and regulatory response can be examined in several consecutive phases. The initial phase started from 10 January, when the WHO issued the warnings and technical guidance on how countries deal with the new virus. On 24 January, the government tasked the State Emergency Commission (SEC), an inter-agency emergency management body led by the deputy prime minister and supported by NEMA, with the lead role in the government's pandemic planning. On 13 February, a heightened state of readiness (or Level II) was declared by the cabinet to support nationwide efforts to contain the outbreak.<sup>10</sup> Mongolia never declared a nationwide state of emergency, but instead operated under a "heightened awareness" level with the response led by the SEC.<sup>11</sup>

In January, the Ministry of Health worked closely with the WHO country representative and directed all public health professionals to promote public awareness of the potential outbreak in China and ways to prevent from the virus. The public was advised to wear masks in public places, wash hands regularly, and avoid travelling to China. Wearing masks in Mongolia is common in winter due to the high levels of air pollution, thus compliance with this directive was high.

<sup>8</sup> "COVID-19 Information," US Embassy in Mongolia, 5 May 2020, <https://mn.usembassy.gov/covid-19-information/>.

<sup>9</sup> Agence France-Presse, "Mongolia to maintain strict virus regulations 'until vaccine found,'" *Jakarta Post*, 26 May 2020, <https://www.thejakartapost.com/news/2020/05/26/mongolia-to-maintain-strict-virus-regulations-until-vaccine-found.html>.

<sup>10</sup> The Minutes of the SEC, 13 February 2020, <https://nema.gov.mn/wp-content/uploads/2020/02/УОК-ын-даргын-тушаал№04.pdf>.

<sup>11</sup> Bolor Lkhaajav, "Mongolia's Small-Country Strategy for Containing COVID-19," *The Diplomat*, 28 March 2020, <https://thediplomat.com/2020/03/mongolias-small-country-strategy-for-containing-covid-19/>.

The health regulations for Covid-19 were in line with ongoing public health measures to reduce the impacts of the seasonal flu and other respiratory diseases that are common in winter due to air pollution and cold weather that keeps people indoors. Secondary schools and kindergartens were already on winter break from 23 December, and they did not reopen in January after the New Year holiday. Following WHO technical guidelines, the Ministry of Health conducted several training workshops to prepare emergency responders and develop public awareness campaigns about the new virus outbreak.

As the crisis in China grew, Mongolia tasked the SEC with supporting efforts of the Ministry of Health and National Center for Communicable Disease. The SEC oversees the inter-agency emergency body, which has the power to coordinate and mobilize the national and local authorities. One of the first actions was to closely monitor and control Mongolia's international border crossings, especially those with China. Efforts to control borders were supported because all border crossings with China were closed from 24 to 27 January for the Chinese Lunar New Year holiday. From 28 January, inter-agency teams were set up at all border crossing points to conduct health screenings, including temperature checks, and were authorized to do contact tracing, conduct testing, and order isolation for travellers until they received negative test results.<sup>12</sup>

On 27 January, as directed by the SEC, the Ministry of Education announced that secondary schools and kindergartens would close until after the Mongolian Lunar New Year in late February.<sup>13</sup> Post-secondary schools, including universities, colleges, and vocational centres, were shifted to distance learning. Similarly, the Ulaanbaatar Emergency Commission, headed by the city's mayor, prohibited mass-gatherings; closed all sporting, cultural, recreational, and educational facilities; and reduced operating hours of shops, markets, and restaurants. The State Professional Inspection Agency began to enforce stricter standards for the sanitation of public transportation, food and catering facilities, and government service facilities, especially in Ulaanbaatar and southern provinces bordering China.

In early February, the SEC established a twenty-four-hour inter-agency Emergency Headquarters at NEMA, which was supported by sub-headquarters in the main districts of Ulaanbaatar and offices in most provinces and county-level municipalities.<sup>14</sup> Besides coordinating the nationwide emergency response, the Emergency Headquarters was tasked with three key objectives: (1)

<sup>12</sup> The Minutes of the SEC, 24 January 2020, <https://nema.gov.mn/wp-content/uploads/2020/01/>.

<sup>13</sup> Ministry of Education, Culture, Science, and Sports, "[Classes will be taught for kindergartens and secondary schools by television and for universities online]," Press Release, 29 January 2020, <https://mecss.gov.mn/news/2267/> [title translated from Mongolian].

<sup>14</sup> The Minutes of the SEC, 10 March 2020, <https://nema.gov.mn/wp-content/uploads/2020/03/УОК-ын-11-р-хурлын-тэмдэглэл.pdf>.

to enforce the cancellation of Lunar New Year celebration and all major holidays (International Women’s Day, Military Day); (2) to support border restrictions, contact tracing, compulsory testing, and isolations; and (3) to organize the repatriation of Mongolian citizens.<sup>15</sup>

Mongolia celebrated its Lunar New Year, known as Tsagaan Sar, four weeks after China, from 24 to 26 February. This is a very important national holiday that typically involves extensive travel to visit family and major national events such as a wrestling competition. As a preventative measure, the country shut down public transportation for three days in Ulaanbaatar and blocked all major roads between the capital city and provincial centres from 21 February to 1 March.<sup>16</sup> Road checkpoints were set up throughout the country to enforce internal travel prohibitions. Similarly, Mongolia restricted travel for the Kazakh New Year celebration, Nauryz, held on 19 March.<sup>17</sup> Most Kazakhs in Mongolia live in Ulaanbaatar and in the western Mongolian province of Bayan-Ulgii, but no travel was permitted between these locations.

In late March, the Mongolian government took several actions to extend Covid-19 controls and address political and economic concerns. On 22 March, in an emergency session, the cabinet secretariat announced the extensions of school and social activity closures until April 30.<sup>18</sup> On 25 March, Mongolian President Battulga Khaltmaa proposed postponing parliamentary elections planned for June 2020 to save on election expenses and for the centralization of public administration, which he indicated “does not imply an endorsement for dictatorship, but an inevitable step to take.”<sup>19</sup> However, the president’s calls to postpone the election did not gain widespread support and had no legal justification.<sup>20</sup> On 27 March, Prime Minister Khurelsukh rejected the president’s call to postpone parliamentary elections scheduled for 24 June.<sup>21</sup> At the same time, to address economic concerns, the prime minister announced a USD 1.8 billion package of economic support measures, including a six-month tax holiday for individuals and many companies for personal, social insurance, and corporate taxes, as well as subsidies to companies to keep workers employed.<sup>22</sup>

<sup>15</sup> The Minutes of the SEC, 10 March 2020.

<sup>16</sup> Jargalsaikhan, “Mongolia’s Effective.”

<sup>17</sup> Jargalsaikhan, “Mongolia’s Effective.”

<sup>18</sup> Lkhaajav, “Mongolia’s Small-Country.”

<sup>19</sup> T. Baljmaa, “President Calls for Measures to Overcome Coronavirus Crisis,” *Montsame*, 26 March 2020, <https://www.montsame.mn/en/read/220192>.

<sup>20</sup> The *Law on Parliamentary Election* stipulates the election would be postponed in the case of a nationwide state of emergency or state of war (Article 9.3). The Parliament voted in favour of conducting the election as scheduled on 24 June.

<sup>21</sup> T. Baljmaa, “Government unveils MNT 5.1 trillion plan to help those affected by COVID-19,” *Montsame*, 27 March 2020, <https://montsame.mn/en/read/220354>.

<sup>22</sup> Baljmaa, “Government unveils.”

The repatriation of Mongolian citizens from abroad was politically controversial. Some politicians opposed repatriations for fears that returnees would bring Covid-19 into Mongolia.<sup>23</sup> Starting on 15 March, the Mongolian government began to organize chartered flights to repatriate Mongolian citizens abroad who requested to return. By late May, 9,000 Mongolian citizens abroad had returned to Mongolia, one of the highest rates of repatriation in the world based on population size; however, 10,500 Mongolians who wanted to return home were still stranded abroad.<sup>24</sup>

#### 4. Enforcement Mechanisms and Public Support

Efforts to prepare for Covid-19 and prevent its introduction and spread have been coordinated through the existing national emergency management system. The emergency system was restructured in 2001 when NEMA was established as a government agency, separating it from the Ministry of Defense. National emergencies had previously been seen as an element of civil defence, focussed on the mobilization of the military and civilian assets at the time of disasters, such as wildfires or severe winter weather. The 2003 *Law on the Prevention of Disasters* defined the roles and responsibilities of government institutions and prioritized centralized inter-agency preparedness and responses for national emergencies.<sup>25</sup> The law puts professionals from government ministries and agencies in control of emergency planning and coordination and restricts political interference during nationwide emergency responses.

Mongolia has a hybrid political system, with a single house legislature, the State Great Hural, led by a prime minister, who heads the cabinet and oversees the executive branch of government.<sup>26</sup> Mongolia also has a president who serves as head of state and head of the armed forces. The president must approve the prime minister's appointment and can veto legislation but has limited influence over government operations. The lead agency in the Covid-19 response was the SEC,<sup>27</sup> which played an important role as an inter-agency consultative and

<sup>23</sup> Zorigtkhuu Bat-Erdene, "Personal Experience of National Quarantine during COVID 19," *Mongolia Focus*, 26 March 2020, <http://blogs.ubc.ca/mongolia/2020/covid19-quarantine-experience/>.

<sup>24</sup> B. Batchimeg, "8 more charter flights to bring 2000 Mongolians from abroad next month," *Montsame*, 29 May 2020, <https://www.montsame.mn/en/read/227070>.

<sup>25</sup> *Law on the Prevention of Disasters*, 2017, <https://www.legalinfo.mn/law/details/12458?lawid=12458>.

<sup>26</sup> *The Constitution of Mongolia*, 1992.

<sup>27</sup> The SEC is a regular inter-agency disaster prevention and response mechanism. It operates year-round and expands in accordance with the level of disaster prevention and response measures.



coordinative body to provide recommendations to the government cabinet for final decisions.

The SEC has the right and power to direct all ministries, agencies, and local governments to enforce its decisions and support the efforts of NEMA. Under the *Law on Prevention of Disasters*, governors of the capital city and provinces head local emergency commissions that report directly to the SEC. At the same time, the SEC has the responsibility to update the cabinet, Parliament, and parliamentary committees. Within the government, the Ministry of Health, the National Centre for Communicable Disease, and NEMA have served as the lead agencies addressing the pandemic, with support provided by other ministries and agencies.

The SEC's decisions to restrict international travel, prohibit mass gatherings, and repatriate Mongolian citizens were backed by government resolutions. The commission regularly updates the Parliament as well as the National Security Council, which is headed by the president. Starting on 24 January, an SEC designated an inter-agency team led by the Ministry of Health provided daily briefings to the public to avoid disinformation and rumours.<sup>28</sup> These briefings included information on the number of tests administered, any positive test results, the number of people in isolation, and the timing and process for repatriation efforts.<sup>29</sup>

The government and key officials have been widely supportive of efforts by the SEC and other agencies. Political leaders, including the president, prime minister, and members of Parliament, have not attempted to interfere with the work of the SEC. Parliament endorsed the prime minister's emergency response decisions and the work of the SEC. The standing and authority of Prime Minister Khurelsukh was strengthened by the fact that he was the former head of NEMA. He supported the work of emergency experts and asked the public to support the inter-agency emergency response. President Battulga has generally called for national unity, although he disagreed with the prime minister on the need to postpone parliamentary elections. This disagreement did not grow into a larger issue as the prime minister stated that he did not see the need at the time to postpone the elections; he "respected the recommendations of the President and would look further into them."<sup>30</sup>

Mongolia's response to Covid-19 was a significant test of the country's national emergency and disaster response system. To prepare for potential community spread, the SEC conducted a major exercise from 6 to 8 May in the Chingeltei

<sup>28</sup> The Minutes of the SEC, 24 January.

<sup>29</sup> The Ministry of Health of Mongolia conducted a daily briefing with the representative office of the WHO after 22 January. Daily briefings are available at <https://covid19.mohs.mn>.

<sup>30</sup> T. Baljmaa, "Government unveils."

District of Ulaanbaatar to test inter-agency coordination and readiness and to increase the public awareness of the total lockdown procedures.<sup>31</sup> Based on lessons learned from the country's response to Covid-19, Parliament considered amendments to the *Law on Prevention from Disasters* to better align it with a pandemic response in addition to other national emergencies.

Overall, the use of the SEC to respond to the pandemic outbreak was crucial in insulating a professional response from populist, polarized politics. Some disagreements among different politicians and parties arose on issues such as the scope of the economic and social lockdown required, whether the parliamentary election could be conducted, the scope and type of financial assistance to provide citizens and businesses, and the issue of the repatriation of citizens; however, these disagreements were generally mild and did not undermine national unity or the overall Covid-19 response effort. Public support for the government's actions remained high. Most notably, there was nationwide support when the health minister proposed to cancel activities and travel associated with the biggest national holiday, the Tsagaan Sar Lunar New Year. The health minister's proposal was immediately endorsed by the SEC, the prime minister, and the president.<sup>32</sup> The public also remained supportive despite the many inconveniences created by the Covid-19 response plan, such as the temporary closures of transportation systems between the capital city and provinces and public transportation in the capital city.

While the public was generally supportive of Covid-19 efforts, several areas of concern have arisen. First, some members of the public and at least one leading politician expressed concern about the government's commitment to repatriate Mongolian citizens from abroad using chartered flights, since the majority of confirmed cases as of mid-2020 had been travellers on these flights.<sup>33</sup> The prime minister repeatedly affirmed his intention to repatriate citizens, especially those with medical conditions or those in at-risk groups. There were some concerns expressed about the fairness and speed of the repatriation process, with accusations that family member and friends of government officials received preferential treatment and too few flights had been scheduled.<sup>34</sup>

<sup>31</sup> Anandsaikhan Nyamdavaa, "Practice Makes Perfect? Mongolia's COVID-19 Outbreak Drill," *The Diplomat*, 9 May 2020.

<sup>32</sup> President's Decree, 12 February 2020, <https://president.mn/12609/>; The Government of Mongolia, "[Lunar New Year will not be observed, President Kh. Battulga issued a decree to the cabinet to prevent the pandemic]," Press Release, 12 February 2020; and Minutes of the SEC, 10 February 2020, <https://nema.gov.mn/wp-content/uploads/2020/02/УОК-ын-4-р-хурлын-тэмдэглэл-02.10.pdf>.

<sup>33</sup> Bat-Erdene, "Personal Experience."

<sup>34</sup> "Mongolians rally in South Korea demanding their evacuation," *AKIPress*, 20 May 2020, <https://news.mn/en/792525/>.

Overall, repatriation is popular as many Mongolians had family members working or studying abroad and there was pressure to bring them home. The repatriation process was complicated and costly, and while evacuees covered a portion of the costs of their evacuation travel and twenty-one-day isolation, the Mongolian government subsidized the costs. The process of repatriation was slowed because of the rules mandating isolation in government-run facilities for three weeks after return. These facilities were at capacity with 1,200 people in mandatory quarantine in late May, making it difficult to speed up repatriation efforts until spaces could be made available for new arrivals.<sup>35</sup>

Second, challenges emerged in the enforcement of mask-wearing and self-isolation. As the weather got warmer in spring, people were reluctant to wear masks. In early April, the SEC began to promote a “Let’s Wear Masks” campaign, and police and local administrative units were mobilized and empowered to fine those not wearing masks in public.<sup>36</sup> Mongolia also explored the use of tracing apps or IDs with traceable chips to ensure that people complied with a required fourteen-day self-quarantine period that had to be completed at home after their twenty-one-day mandatory isolation time after returning from abroad. NEMA and the police posted official notices of required self-isolation on household doors, but the use of apps or other electronic controls have been criticized by rights activists and were not widely adopted.

A third challenge in Mongolia, as in other countries, was the rise of poverty, challenges for vulnerable youth and families, and a rise in domestic violence. Reports of the physical and emotional abuse of children rose sharply in February and March 2020 compared to one year earlier, and concerns were raised due to the extended closures of schools, which disproportionately affected children in vulnerable families.<sup>37</sup> The economic impacts led to a sharp rise in unemployment, and many families slipped below the poverty line.<sup>38</sup> Mongolia sought to address these challenges with the help of international organizations by increasing welfare allowances for families and children and allowing deferrals of electricity bills.<sup>39</sup>

<sup>35</sup> A. Munkhzul, “Mongolia ranks 2nd.”

<sup>36</sup> The Decision of the SEC, 11 April 2020, <https://nema.gov.mn/wp-content/uploads/2020/04/УОК-ЫН-2020-ОНЫ-9-Р-ТОГТООЛ.pdf>.

<sup>37</sup> UNICEF, “Mongolia: Novel Coronavirus (COVID-19) Situation Report No. 1,” *Reliefweb*, 21 April 2020, <https://reliefweb.int/report/mongolia/mongolia-novel-coronavirus-covid-19-situation-report-no-1>.

<sup>38</sup> UNICEF, “Mongolia: Novel.”

<sup>39</sup> Oyunsuren Damdinsuren and Enkhbayar Namjildorj, “Sheep diplomacy and a troubled economy: Mongolia amid COVID-19,” *Friedrich Ebert Stiftung*, 30 April 2020, <https://www.fes-asia.org/news/sheep-diplomacy-and-a-troubled-economy-mongolia-amid-covid-19/>.

## 5. Economic Challenges

The Covid-19 crisis has heightened Mongolia's close cooperation with international organizations, but also highlighted the country's isolation and vulnerability, in particular its heavy economic dependence on China. Since emerging from Soviet control in 1990, Mongolia has been highly reliant on aid provided by international development agencies and bilateral aid partners such as the United States, Japan, the European Union, China, and India. In its Covid-19 response, Mongolia closely collaborated with organizations such as the WHO, the Asian Development Bank (ADB), and the World Bank. The WHO supported the Ministry of Health by providing access to lab tests and personal protective equipment (PPE) while also serving as a key source of advice and information on how to set up and run testing and contact tracing.<sup>40</sup> In May, the ADB provided Mongolia with a USD 100 million loan to address the government's National Emergency Response Plan to strengthen the national health system and provide support for poor and vulnerable groups in society.<sup>41</sup> The World Bank also contributed over USD 27 million to help Mongolia develop its public health system to deal with Covid-19 and future health emergencies.<sup>42</sup>

The pandemic also positively influenced Mongolia's cooperation with neighbouring countries such as Japan, South Korea, and China. Japan played a key role in supporting Mongolia's public health system and provided Covid-19 test kits.<sup>43</sup> Mongolia received important medical equipment from Japan and South Korea and worked closely with these countries to organize citizen repatriations and resolve consular matters for trapped citizens. Mongolia has also been able to raise its profile and level of cooperation with China, its most important economic partner. On 27 February, President Battulga became the first foreign head of state to visit China after the onset of the Covid-19 crisis, meeting with Chinese President Xi Jinping and Premier Li Keqiang.<sup>44</sup> President Battulga's visit was a very visible show of support for China, and he pledged a gift of 30,000

<sup>40</sup> WHO, "Supporting frontline workers in the COVID-19 response," *WHO Mongolia*, 11 April 2020, <https://www.who.int/mongolia/news/detail/10-04-2020-supporting-frontline-workers-in-the-covid-19-response>.

<sup>41</sup> "ADB Provides \$100 Million to Support Mongolia's COVID-19 Response," *Asian Development Bank*, 11 May 2020, <https://www.adb.org/news/adb-provides-100-million-support-mongolias-covid-19-response>.

<sup>42</sup> "World Bank's Response to COVID-19 (coronavirus) in Mongolia," World Bank, May 2020, <https://www.worldbank.org/en/country/mongolia/brief/world-bank-groups-response-to-covid-19-coronavirus-in-mongolia>.

<sup>43</sup> E. Erdenejargal, "Embassy in Japan sends Mongolia 200 COVID-19 test kits," *Montsame*, 27 February 2020, <https://montsame.mn/en/read/217159>.

<sup>44</sup> "Mongolian President under Quarantine after China Trip," *Nikkei Asian Review*, 29 February 2020, <https://asia.nikkei.com/Spotlight/Coronavirus/Mongolian-president-under-quarantine-after-China-trip>.

sheep as a sign of friendship. The visit received popular acclaim in Chinese social media, receiving more than 100 million views, and was applauded widely in Mongolia.<sup>45</sup> In February, Mongolian businesses, students, and alumni associations donated USD 150,000 to the Chinese people to help overcome the outbreak.<sup>46</sup> In return, Chinese nationals donated money to support the Mongolian government's Covid-19 response, and the Chinese government provided an assistance package that included key medical supplies such as N-95 masks, protection gear, and test kits.<sup>47</sup> In contrast, Mongolian public perceptions of Russia, Mongolia's traditional partner, fell. Russia was the source of most Covid-19 cases in Mongolia, and many Mongols living and studying in Russia returned to Mongolia. While Russia had not offered Mongolia significant aid or supplies by May 2020, Mongolia sent USD 1 million in meat products to support the neighbouring Russian region of Buryatia, which was hard-hit by coronavirus.<sup>48</sup>

Despite the warm words and friendship shown between Mongolia and China, the pandemic highlighted Mongolia's economic vulnerabilities and weak position vis-à-vis its much larger southern neighbour. Mongolia has been cited as one of the countries most at economic risk due to the coronavirus pandemic, and fears are growing of a potential default on Mongolia's debt holdings.<sup>49</sup> Ninety per cent of Mongolia's exports go to China, mainly coal, copper, oil, and agricultural products, such as cashmere. The value of exports fell by 45 per cent in the first four months of 2020 compared to 2019 due to the global fall of commodity prices, the complete closure of the Chinese border to trade from 1 February to 15 March, and the slow resumption of trade after that time due to travel restrictions and low demand.<sup>50</sup> Mongolia's herding families in rural areas, one-third of the population, were especially hard-hit as cashmere prices and demand plummeted during the key spring buying season.<sup>51</sup> Travel restrictions severely impacted tourism, a fast-growing sector highly concentrated in the short summer season.

<sup>45</sup> Damdinsuren and Namjildorj, "Sheep diplomacy."

<sup>46</sup> "3,196 Million Tugrug Donated to Chinese Ambassador," *Unuudur*, 13 March 2020, <http://unuudur.mn/бнхау-ын-элчин-сайдад-3916-сая-төгрөгийн-хандивыг-гардуулж-өглөө/>.

<sup>47</sup> "Chinese Embassy and Nationals Made Donations," *News.mn*, 19 March 2020, <https://news.mn/r/2276198/>.

<sup>48</sup> "Mongolia to send meat worth \$1 million to Russia to combat COVID-19," *AKIPress*, 24 April 2020, [https://akipress.com/news:640205:Mongolia\\_to\\_send\\_meat\\_worth\\_\\$1\\_million\\_to\\_Russia\\_to\\_help\\_combat\\_COVID-19/](https://akipress.com/news:640205:Mongolia_to_send_meat_worth_$1_million_to_Russia_to_help_combat_COVID-19/).

<sup>49</sup> "Mongolia, Hong Kong Most Exposed in North Asia to Coronavirus Economic Fallout," *Fitch Ratings*, 19 February 2020, <https://www.fitchratings.com/research/sovereigns/mongolia-hong-kong-most-exposed-in-north-asia-to-coronavirus-economic-fallout-19-02-2020>.

<sup>50</sup> M. Unurzul, "Exports decreased by 45.3% compared to previous year," *Montsame*, 13 May 2020, <https://montsame.mn/en/read/225294>.

<sup>51</sup> K. Bayartsogt, "Cashmere piles up in Mongolia as coronavirus cripples trading," *Nikkei Asian Review*, 17 May 2020, <https://asia.nikkei.com/Business/Markets/Commodities/Cashmere-piles-up-in-Mongolia-as-coronavirus-cripples-trading>.

Mongolia's economy was highly trade dependent, and due to the coronavirus pandemic, GDP was projected to shrink in 2020, leading to fears that the country may need to refinance its debts for the second time in four years.<sup>52</sup> In 2017, Mongolia was forced to seek a bailout led by the IMF due to excessive government spending, and the IMF was already concerned in late 2019 that Mongolia's budget deficit was again reaching unsustainable levels.<sup>53</sup> Increased government spending, combined with a fall in tax revenue due to government policies aimed at offering individuals and companies economic support, raised fears of another debt crisis.<sup>54</sup> Many mining companies, herders, and tourism operators were hoping that the gradual reopening of the border with China would lead to a resumption of natural resource exports and the arrival of Chinese tourists and traders, but there was also a recognition that the global economic slump would continue to negatively impact prices and demand for natural resources.<sup>55</sup>

One consequence of the Covid-19 health and economic crisis may be an even deeper Mongolian reliance on China as an economic market and potential foreign investor. China has long been interested in Mongolia's natural resource deposits, but Mongolia has been reluctant to allow extensive Chinese investment due to fears of over-reliance on its much-larger neighbour.<sup>56</sup> However, given the high level of risk and prospects of a continued global economic slump, few foreign investors from countries other than China are interested in making major investments in emerging markets such as Mongolia. The relatively low number of coronavirus cases in both China and Mongolia offered some hope for the creation of a trade and travel "bubble" between the two nations, but continued concerns about uncontrolled outbreaks in other countries, such as Russia, and a global economic slowdown, creates challenges in opening to other countries or diversifying trade beyond China. Mongolia was able to successfully manage the domestic public health aspects of the Covid-19 crisis, but faces greater challenges managing the longer-term economic problems and threats to its national independence brought about by the global economic crisis created by the pandemic.

<sup>52</sup> "Mongolia and the IMF," IMF, 17 May 2020, <https://www.imf.org/en/Countries/MNG>.

<sup>53</sup> "Mongolia and the IMF."

<sup>54</sup> "Mongolia, Hong Kong."

<sup>55</sup> Bayartsot, "Cashmere piles."

<sup>56</sup> Charles Krusekopf, "Mongolian perspectives on Northeast Asian energy security cooperation," in Bo Kong and Jae H. Ku eds., *Energy Security Cooperation in Northeast Asia* (Oxfordshire: Routledge), 100–117.



# Reset or Revert in the New Climate Normal

*Navraj Singh Ghaleigh\** and *Louise Burrows\*\**

## 1. Introduction

“New normals” are a trope of Covid-19 debates. This chapter makes the case that ambitious climate action should be central to the “new normal” in Asia and that law has an important role in delivering it. From the perspective of climate change policy and law, the Covid-19 catastrophe offers the slim possibility that we will “build back better,” restoring our societies and economies along climate-friendly lines. This approach—*resetting*—envisages national stimulus packages and allied actions of central banks and financial regulators which are oriented toward economic growth *and* net-zero emission pathways in the months and years following Covid-19. Such policy approaches would include monetary financing, asset purchase programs, small and medium-sized enterprise (SME) support, and bailouts. Being “Paris-aligned” (aligned with the objectives of the Paris Agreement<sup>1</sup>), these initiatives would be heavily weighted toward net-zero buildings, energy storage, climate-friendly materials, clean industry and land-use, transport, and greenhouse gas (GHG) removal. The alternative narrative—*reversion*—identifies a recovery trajectory in which policies that are supportive of carbon-intensive pathways push the Paris Agreement targets further out of reach. Components of such recovery packages include unconditional bailouts for the fossil fuel sector,<sup>2</sup> conventional mobility (e.g., aviation, combustion engine-powered vehicles), and so on. Reversion may appear akin to the status quo, but resetting is far from a marginal preoccupation of the environmental movement.

\* Senior Lecturer in Climate Law, Edinburgh Law School, University of Edinburgh.

\*\* Policy Advisor—Coal to Clean Transition, E3G. The authors are pleased to record their thanks to MacKenzie Kermode for her exceptional research assistance. Navraj acknowledges with thanks the support of the Scottish Funding Council’s Global Challenges Research Fund Strategy.

<sup>1</sup> *United Nations Framework Convention on Climate Change – Paris Agreement*, 12 December 2015, UNTS C.N.92.2016.TREATIES-XXVII.7.d (entered into force 4 November 2016). See generally Navraj Singh Ghaleigh and Cleo Verkuil, “Paris Agreement, Article 3,” in Navraj Singh Ghaleigh, “Paris Agreement, Article 2” in Geert Van Calster et al. eds., *Research Handbook on Climate Change Mitigation* (Elgar, 2020).

<sup>2</sup> Jason Dion and Martin Olsynsk, “Well and Good,” Canadian Institute for Climate Choices, April 2020, <https://climatechoices.ca/well-and-good/>.



Advocates include international organizations,<sup>3</sup> leading central bankers,<sup>4</sup> major corporations,<sup>5</sup> and governments,<sup>6</sup> although the signals can be scrambled.<sup>7</sup>

This chapter explores the tension between these two approaches in the immediate response to Covid-19. We focus on the coal sector as an emblematic variable in climate change debates. Coal is particularly significant in terms of its environmental impact, its predominance in Asia, and its unstable economics. These aspects each have relevance to policy responses to climate change, in particular the means by which coal is financed by states through export credit agencies (ECAs), which may be susceptible to legal challenge. Our discussion is limited to a selection of Asian jurisdictions that are representative of the major trends and processes.

Whether governments take the crisis as the opportunity to reset major societal systems along more climate friendly lines or bailouts are used to prop up carbon-intensive pathways will depend in part on the capacity of ordinary systems of governance. Much more could be said on those vital debates, so this chapter should be read together with other contributions in this volume addressing accountability, scrutiny, and other elements of governance.

Covid-19 drove new vectors in global affairs. Asia set best practice, and “the West” was chastened for failing to follow its public health response.<sup>8</sup> Unprecedented reductions in global emissions were observed.<sup>9</sup> For the climate community, the key question is whether Covid-19 could drive a low-carbon “new normal” in Asia, putting the world on a trajectory aligned with the requirements of settled climate science.

## 2. Climate Change: Causes, Impacts, and Equity

Many parts of Asia are vulnerable to the impacts of climate change, owing to its large coastal populations, the frequency of natural disasters, and rapid urbanization.<sup>10</sup>

<sup>3</sup> “An inclusive, green recovery is possible: The time to act is now,” OECD, 22 April 2020, <http://www.oecd.org/coronavirus/en/#op-ed>.

<sup>4</sup> Andrew Bailey, “The World Must Seize This Opportunity to Meet the Climate Challenge,” *The Guardian*, 5 June 2020.

<sup>5</sup> David Sheppard and Anjali Raval, “BP Calls on Governments to ‘Press Ahead’ with Climate,” *Financial Times*, 14 May 2020.

<sup>6</sup> Michael Nienaber, “Germany’s Merkel wants green recovery from coronavirus crisis,” *Reuters*, 28 April 2020.

<sup>7</sup> Chloé Farand, “German environment minister defends airline bailout,” *Climate Home News*, 27 April 2020.

<sup>8</sup> Michael T. Osterholm and Mark Olshaker, “Coronavirus: Chronicle of a Pandemic Foretold,” *Foreign Affairs*, July/August 2020.

<sup>9</sup> Corinne Le Quéré et al., “Temporary reduction in daily global CO<sub>2</sub> emissions during the COVID-19,” *Nature Climate Change* (2020): 1.

<sup>10</sup> IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability* (Cambridge University Press, 2014), 1327–1370.

Simultaneously, Asia's emerging economies are a hotbed of human activities which drive global heating. Asia is home to five of the world's top ten emitters: China, India, Japan, South Korea, and Indonesia.<sup>11</sup> These five nations alone account for over 40 per cent of global emissions,<sup>12</sup> exceeding the combined total of the Americas, the European Union, and Africa.<sup>13</sup> Substantially a function of regional coal use, these remarkable figures make clear the singular role of Asia in addressing climate change.

## A. Climate Science

The earth's climate system is unequivocally heating. In 2018, the IPCC presented the scientific consensus (for the sixth time since 1990)<sup>14</sup> that human activity is causing rapid and ongoing changes to our global climate.<sup>15</sup> Scientists attribute these changes to an increase in concentration of GHGs from fossil fuel use, driven largely by global development and economic growth.<sup>16</sup> The release of GHG emissions traps infrared radiation in the earth's atmosphere, causing global heating.<sup>17</sup> The ongoing release of emissions will increase the global mean temperature by considerably more than 2°C by 2100.<sup>18</sup>

Such temperature rises will cause climatic changes that will have negative and far-reaching impacts globally.<sup>19</sup> Initial impacts will be felt most strongly across natural systems and will lead to adverse knock-on social and economic consequences.<sup>20</sup> Across Asia, for example, sea-level rise is already threatening heavily populated coastlines and low-lying regions.<sup>21</sup> Rising temperatures are also causing Himalayan glacial melt, increasing the risk of floods, and depleting the flow of major rivers.<sup>22</sup> According to the World Bank, 800 million South Asians will experience declining

<sup>11</sup> "Global Carbon Atlas 2018," <http://www.globalcarbonatlas.org/en/CO2-emissions>.

<sup>12</sup> Combined total of 15,154 Mt of CO<sub>2</sub> representing 41 per cent of the global total of 36,573 Mt of CO<sub>2</sub>: UNFCCC, "National Inventory Submissions 2019," <https://unfccc.int/process-and-meetings/transparency-and-reporting/reporting-and-review-under-the-convention/greenhouse-gas-inventories-annex-i-parties/national-inventory-submissions-2019>.

<sup>13</sup> Respectively, 3,445 MtCO<sub>2</sub>, 1,401 MtCO<sub>2</sub> and 7,766 MtCO<sub>2</sub>, all 2018 data: UNFCCC, "Inventory Submissions."

<sup>14</sup> "Special Report: Global Warming of 1.5°C," United Nations Intergovernmental Panel on Climate Change (IPCC), 2018, <https://www.ipcc.ch/sr15/>.

<sup>15</sup> See generally Navraj Singh Ghaleigh, "Science and Climate Change Law," in Kevin R. Gray et al. eds., *The Oxford Handbook of Climate Change Law* (Oxford University Press, 2016).

<sup>16</sup> *Fifth Assessment Report*, IPCC, 2014, at 4, <https://www.ipcc.ch/assessment-report/ar5/>.

<sup>17</sup> *Fifth Assessment Report*, 2–4.

<sup>18</sup> *Fifth Assessment Report*, 10.

<sup>19</sup> *Fifth Assessment Report*, 4.

<sup>20</sup> *Fifth Assessment Report*, 4.

<sup>21</sup> Amit Prakash, "Boiling Point," *International Monetary Fund Finance and Development*, September 2018, <https://www.imf.org/external/pubs/ft/fandd/2018/09/pdf/southeast-asia-climate-change-and-greenhouse-gas-emissions-prakash.pdf>.

<sup>22</sup> "How climate change will affect Asia," *South China Morning Post*, 11 March 2019.

productivity, incomes, crop yields, and health due to climate change.<sup>23</sup> These impacts are a select few of the many climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth which are projected to increase with a global warming of 1.5°C and increase further with 2°C.

## B. The Paris Agreement

The Paris Agreement achieved universal ratification in Asia. It commits parties to reducing their GHG emissions to meet their general obligations to limit global temperature rises.<sup>24</sup> It also contains provisions specifically relevant to finance.<sup>25</sup> These commitments aim to keep the increase in global average temperature to well below 2°C in comparison to pre-industrial levels and to pursue efforts to limit the increase to 1.5°C. This equates to keeping 80 per cent of current fossil fuel reserves in the ground.<sup>26</sup> To meet Paris temperature targets, the science is unequivocal that we need collectively to achieve net zero carbon emissions by 2050.

Differentiation and equity are central organizing principles of the climate regime, meaning that the obligations of states are mediated through factors including their historic contribution to global emissions, capacity to abate, and dependence on fossil fuels. See Figure 1.

		Difficulty of transition →	
		<i>Lower dependence</i>	<i>Higher dependence</i>
Capacity to fund transition ↑	<i>Higher capacity</i>	Rapid phase-out No international support (e.g., Canada, US, Germany, UK, Norway)	Slower phase-out No international support (e.g., Kuwait, Saudi Arabia, UAE, Brunei)
	<i>Lower capacity</i>	Medium pace of phase-out Some international support (e.g., Bolivia, Vietnam, Mozambique, Tanzania)	Slowest phase-out More international support (e.g., Equatorial Guinea, Timor Leste, Iraq, South Africa)

**Figure 1:** Indicative grouping of countries for application of equity principles

Source: Greg Muttitt and Sivan Kartha, “Equity, Climate Justice and Fossil Fuel Extraction: Principles for a Managed Phase Out,” *Climate Policy* (31 May 2020).

<sup>23</sup> Muthukumara Mani and Gulrez Shah Azhar, “As South Asia’s heat rises, living standards decline,” *End Poverty in Southeast Asia*, World Bank Blogs, 26 August 2019, <https://blogs.worldbank.org/endpovertyinsouthasia/south-asias-heat-rises-living-standards-decline>.

<sup>24</sup> *Paris Agreement*, art. 2(1)(a).

<sup>25</sup> *Paris Agreement*, art. 2(1)(c).

<sup>26</sup> “Unburnable Carbon 2013,” Carbon Tracker Initiative, Grantham Research Institute, 2013, at 9, <http://carbontracker.live.kiln.digital/Unburnable-Carbon-2-Web-Version.pdf>.

Industrialized countries, in historic and cumulative terms, have been the primary emitters of GHGs and are the predominant cause of climate change, whereas developing countries have lower emission patterns but are the most vulnerable to its impacts.<sup>27</sup> A global phase-out of fossil fuels must consider the aforementioned principles<sup>28</sup> as well as the need for a “Just Transition.”<sup>29</sup>

### C. Coal and Climate Change

Coal use currently accounts for 40 per cent of global fossil fuel and industry emissions, two-thirds of which are from coal-fired power. International Energy Agency analysis shows that CO<sub>2</sub> emitted from coal combustion is responsible for over 0.3°C of the 1°C increase in global average temperatures (above pre-industrial levels) already experienced.<sup>30</sup> This makes coal the single largest source of global temperature increase.<sup>31</sup>

Reducing emissions from coal is essential to meeting the Paris temperature goals. Coal emissions need to fall from current levels of 14.7 Gt of CO<sub>2</sub> per year<sup>32</sup> to between 3.3 Gt and 4.8 Gt per year by 2030 to limit warming to 1.5°C.<sup>33</sup> These targets translate to a substantial 50–80 per cent fall in absolute coal use over the next decade (Figure 2). In this context, new coal-fired power plants are not compatible with globally agreed-upon climate goals.

This analysis is increasingly shared by governments, especially those in the Powering Past Coal Alliance (PPCA).<sup>34</sup> Over the past decade, economic and policy drivers have led to a major trend of coal plant cancellations and retirements across the G7, except for Japan.<sup>35</sup> Japan has been a consistent

<sup>27</sup> Joyeeta Gupta, “Grasping the essentials of the climate change problem,” in *The History of Global Climate Governance* (Cambridge University Press, 2014), 20.

<sup>28</sup> Joyeeta Gupta and Nicolien van der Grijp, *Mainstreaming climate change in development cooperation* (Cambridge University Press, 2010).

<sup>29</sup> Navraj Singh Ghaleigh, “Just Transitions for Workers,” in Alan Bogg et al. eds., *The Constitution of Social Democracy* (Bloomsbury, 2020).

<sup>30</sup> “Global Energy and CO<sub>2</sub> Status Report 2019,” International Energy Agency, 2019, at 3, <https://www.iea.org/reports/global-energy-co2-status-report-2019>.

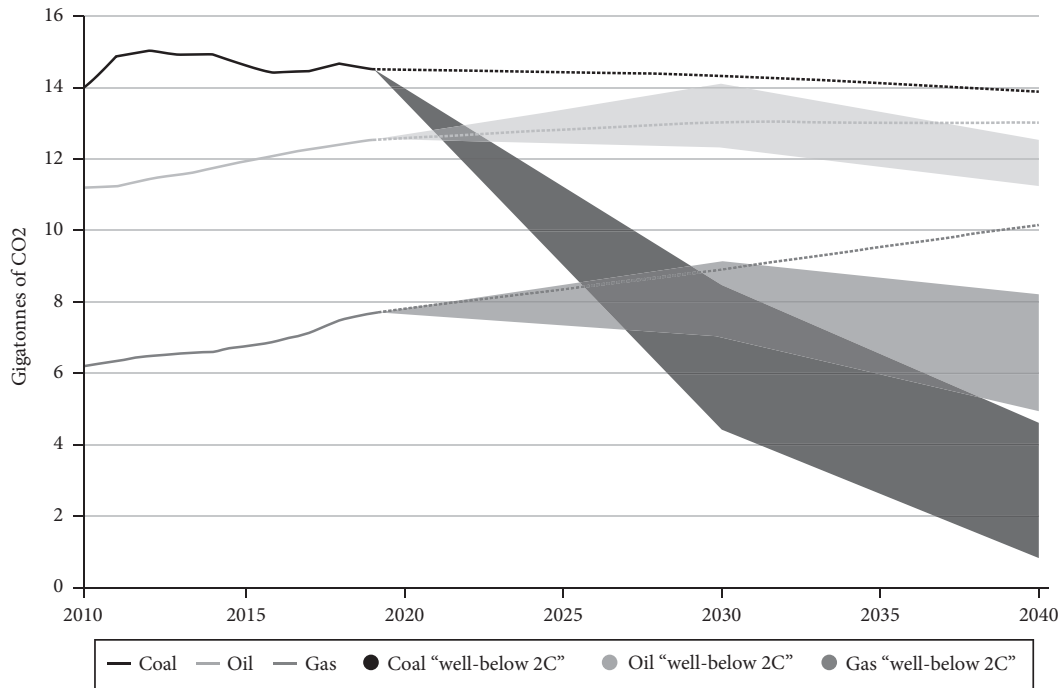
<sup>31</sup> IEA “Global Energy,” 3, 16–18.

<sup>32</sup> “Global Carbon Budget—Data,” Global Carbon Project, accessed 9 June 2020, <https://www.globalcarbonproject.org/carbonbudget/19/data.htm/>.

<sup>33</sup> Simon Evans, “Why coal use must plummet this decade to keep global warming below 1.5C,” *Carbon Brief*, 6 February 2020, <https://www.carbonbrief.org/analysis-why-coal-use-must-plummet-this-decade-to-keep-global-warming-below-1-5c#:~:text=First%2C%20the%20remaining%20carbon%20budget,keep%20warming%20below%201.5C>.

<sup>34</sup> “Powering Past Coal,” accessed 9 June 2020, <https://poweringpastcoal.org/about>.

<sup>35</sup> Louise Burrows and Chris Littlecott, “G7 Coal Scorecard 2019 – Coal Finance Heads for the Exit,” E3G, 26 August 2019, <https://www.e3g.org/library/g7-coal-scorecard-2019-coal-finance-heads-for-the-exit>.



**Figure 2:** Fossil fuel emissions for “well below 2°C” pathways

Source: Carbon Brief (2020) based on IPCC scenarios.

climate laggard<sup>36</sup> since it hosted the Kyoto conference of the parties in 1997 which spawned the Kyoto Protocol.<sup>37</sup> Domestic coal use has been stubbornly high, and Japan’s export and development finance institutions are leading supporters of new coal across Asia.<sup>38</sup> Accordingly, the 30 May 2020 announcement that an expert committee had advised the Japanese government to stop funding exports of coal power technology in its Infrastructure System Export Strategy is a very significant departure. The risk of stranded assets<sup>39</sup> was explicitly highlighted in that advice.<sup>40</sup> Following this review, the Japanese government adopted new principles stating the government will not provide official financial support for any host country that does not have a confirmed policy

<sup>36</sup> Yves Tiberghien and Miranda A. Schreurs, “Climate Leadership, Japanese Style,” in Kathryn Harrison and Lisa McIntosh Sundstrom eds., *Global Commons, Domestic Decisions* (MIT Press, 2010), 19.

<sup>37</sup> *United Nations Framework Convention on Climate Change – Kyoto Protocol*, 11 December 1997, 2303 UNTS 162 (entered into force 16 February 2005).

<sup>38</sup> Bronwen Tucker, Kate DeAngelis, and Alex Doukas, “Still Digging: G20 Governments Continue to Finance the Climate Crisis,” Oil Change International/Friends of the Earth, May 2020, at 5, <http://priceofoil.org/content/uploads/2020/05/G20-Still-Digging.pdf>.

<sup>39</sup> Defined as assets which suffer from unanticipated or premature write-downs, devaluations, or conversion to liabilities. See Ben Caldecott ed., *Stranded Assets and the Environment* (Routledge, 2018).

<sup>40</sup> “About the results of the ‘Experts Fact Review Committee on Official Support for Exports of Coal-fired Power Generation,’” Ministry of Environment (Japan), 26 May 2020, [https://www.env.go.jp/earth/post\\_72.html](https://www.env.go.jp/earth/post_72.html).

for transition to decarbonization. However, these principles still allow special exceptions for Japan to continue supporting coal-fired power projects if they use what Japan deems to be “highly efficient” technologies.<sup>41</sup>

### 3. Coal, Power, and Export Credit Agencies

The Covid-19 pandemic will affect progress on shifting from coal to clean energy in multifaceted ways. The immediate impact of Covid-19 was to dampen supply chains, energy demand, and capital investment, causing a direct drop in coal power generation and construction across Asia. The dramatic decline in coal use conflicts directly with planned capacity additions across Asia and is a boon for efforts to fight climate change. However, as the world shifts into recovery mode, governments will be eager to stimulate their economies,<sup>42</sup> risking a major reboot in coal use across the region. Instead of reverting to business as usual, Covid-19 recovery presents a chance to reset Asia’s reliance on coal, dismantling established coal regimes and rapidly expanding clean alternatives.

#### A. Asia’s Reliance on Coal

The countries analyzed in this chapter rely on large-scale coal power and have more in the pipeline. Figure 3 provides an overview of the coal dynamics of each country.

#### B. Export Credit Agencies and Coal

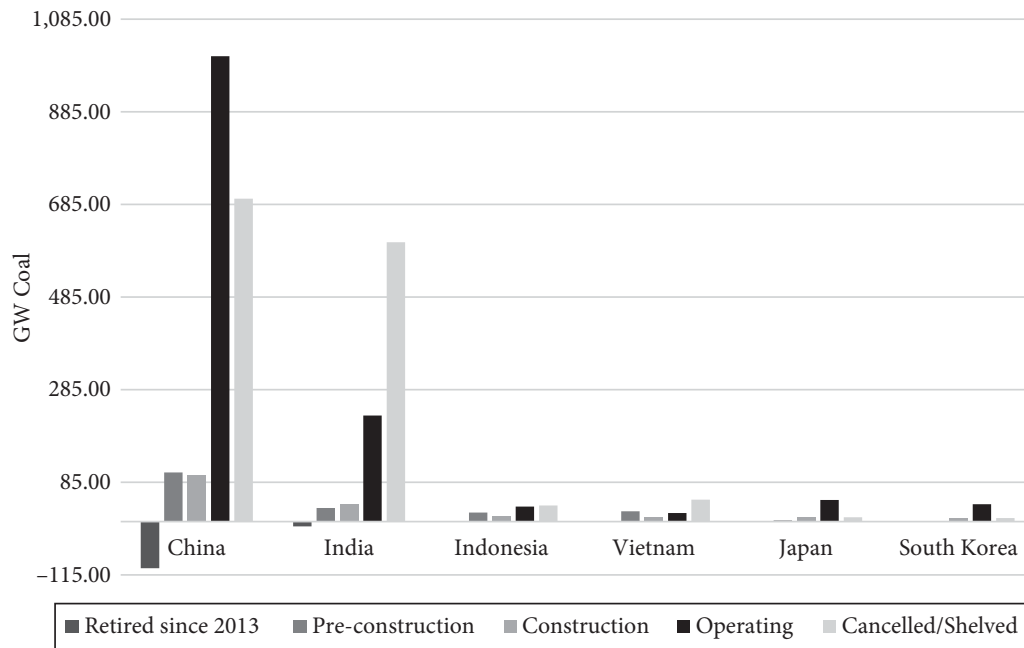
ECAs<sup>43</sup> have, in recent years, moved from the margin to the centre of debates on climate action and finance. One reason for this is the withdrawal of the Multilateral Development Banks (MDBs) from international coal finance.<sup>44</sup> Between 2016 and 2018, ECAs provided USD 31.6 billion annually to support fossil fuel projects: USD 7.1 billion for coal and USD 24.5 billion for oil and gas.

<sup>41</sup> Aaron Sheldrick and Yuka Obayashi, “Japan tightens rules on support for overseas coal-fired plants,” *Reuters*, 9 July 2020, <https://www.reuters.com/article/us-coal-japan-finance/japan-tightens-rules-on-support-for-overseas-coal-fired-plants-idUSKBN24A0CH>.

<sup>42</sup> See Tan and Wang, Chapter 25, this volume.

<sup>43</sup> ECAs are government-owned or -affiliated entities which support the export of domestic goods and services by providing financing to foreign purchasers of such goods and services.

<sup>44</sup> Direct financing of coal from MDBs has declined, but the African Development Bank is a notable exception along with newer MDBs (e.g., Asian Infrastructure Investment Bank and the Islamic Development Bank).



**Figure 3:** Coal-fired power plant dynamics, Asia

Source: Global Energy Monitor, “Global Coal Plant Tracker,” accessed 8 June 2020, <https://endcoal.org/tracker/>.

In comparison, support for renewable energy stands at only USD 2.7 billion p.a.<sup>45</sup> ECA financing enables commercial banks and manufacturers to reduce their risk exposure and therefore leverage additional finance for fossil fuel investments.

Collectively, the ECAs of China, Japan, and South Korea remain the largest source of public finance for coal power plants overseas, accounting for almost 82 per cent of coal pipeline funding since 2013 (outside China and India).<sup>46</sup> They plan to support approximately thirty-five additional coal plants predominately across South and Southeast Asia.

### C. Covid-19 Impacts on Coal

In early 2020, global and economic trends were pointing to a world slowly shifting away from coal use. Data shows that electricity production from coal

<sup>45</sup> Kate DeAngelis and Bronwen Tucker, “Adding Fuel to the Fire” Friends of the Earth/Oil Change International, January 2020, [http://priceofoil.org/content/uploads/2020/01/2020.01.30\\_Adding-Fuel-to-the-Fire\\_final.pdf](http://priceofoil.org/content/uploads/2020/01/2020.01.30_Adding-Fuel-to-the-Fire_final.pdf); see also Christine Shearer et al., “Boom and Bust 2020,” Global Energy Monitor/Sierra Club/Greenpeace/CREA, March 2020, [https://endcoal.org/wp-content/uploads/2020/03/BoomAndBust\\_2020\\_English.pdf](https://endcoal.org/wp-content/uploads/2020/03/BoomAndBust_2020_English.pdf).

<sup>46</sup> “Global Coal Public Finance Tracker,” *Endcoal.org*, accessed 8 June 2020, <https://endcoal.org/finance-tracker/>.

power generation had declined by 3 per cent in 2019 (the biggest fall in at least thirty years).<sup>47</sup> This decline can partly be attributed to the challenging economics surrounding coal and the falling price of renewables. Nearly half of the world's coal power plants were running at a loss, with 46 per cent of the global coal fleet set to be unprofitable by 2020.<sup>48</sup>

Despite these economic and technological tailwinds, Asia still risks being the last bastion of coal growth globally. Coal finance flowing out of China, South Korea, and Japan, along with significant domestic state guarantees,<sup>49</sup> continue to prop up the coal industry. This ongoing finance, coupled with a powerful coal incumbency and high levels of utility debt,<sup>50</sup> has led to a complex range of factors that are blocking a shift from coal to clean energy across the region. However, the immediate impacts of Covid-19 have brought about additional tailwinds in favour of an accelerated exit from coal (Table 1).

#### D. Covid-19 Recovery

The economic responses to Covid-19 provide an opportunity for policy-makers to reallocate capital and reshape geopolitical dynamics, setting coal on a new path for decades to come. Green fiscal recovery packages would not only help shift the world closer to net-zero but also offer superior economic returns compared to business-as-usual.<sup>51</sup> Nonetheless, reports on Covid-19 support schemes indicate that upwards of 20 per cent of emergency loans were allocated to carbon-intensive firms in the aviation, oil, and car manufacturing sectors.<sup>52</sup>

<sup>47</sup> "Global Electricity Review," *Ember*, March 2020, <https://ember-climate.org/wp-content/uploads/2020/03/Ember-2020GlobalElectricityReview-Web.pdf>.

<sup>48</sup> "42% of global coal power plants run at a loss, finds world-first study," Carbon Tracker, 30 November 2018, <https://carbontracker.org/42-of-global-coal-power-plants-run-at-a-loss-finds-world-first-study/>.

<sup>49</sup> Overseas Development Institute, "Tracking G20 coal subsidies," ODI, June 2019, <https://www.odi.org/opinion/10508-tracking-g20-coal-subsidies>.

<sup>50</sup> India and Indonesia in particular. See Simon Nicholas, "COVID-19 is giving the thermal coal sector a look at its long-term future," Institute for Energy Economics and Financial Analysis (IEEFA.org), 5 May 2020, <https://ieefa.org/ieefa-update-covid-19-is-giving-the-thermal-coal-sector-a-look-at-its-long-term-future/>; see also Melissa Brown, "IEEFA Indonesia: Playing with matches – Who should take responsibility for PLN's financial mess?," Institute for Energy Economics and Financial Analysis (IEEFA.org), 30 April 2020, <https://ieefa.org/ieefa-playing-with-matches-who-should-take-responsibility-for-plns-financial-mess/>.

<sup>51</sup> Hepburn et al., "Will COVID-19 fiscal recovery packages accelerate or retard progress on climate change?," 4 May 2020, <https://www.smithschool.ox.ac.uk/publications/wpapers/workingpaper20-02.pdf>.

<sup>52</sup> Richard Partington, "Chemicals firm BASF biggest beneficiary of UK coronavirus loan scheme," *The Guardian*, 4 June 2020. On aviation, see Lee and Dy, Chapter 26, this volume.



**Table 1** Immediate impacts of Covid-19 on coal and corresponding risks and opportunities

<b>Covid-19 Impacts on Coal</b>	<b>Opportunities</b>	<b>Risks</b>
<b>Decrease in demand for coal electricity generation</b> due to manufacturing slowdown and lockdowns. <sup>a</sup>	Drop in electricity demand could lead to delays in coal plant constructions and a reduction of coal pipelines. <sup>b</sup> Reduced electricity demand allows the global community to undertake analysis and pull together large-scale finance for renewable energy as part of stimulus packages.	Risk of coal resurgence aimed to boost countries' economies. China has permitted more new coal plants in February and March 2020 than in the same period last year. <sup>c</sup> Risk of rollbacks in economic, social, and environmental regulations for the coal industry to help it cope with the crisis. India and Indonesia are allowing project developers to invoke force majeure clauses. <sup>d</sup>
<b>Improvements in air quality and significant drops in GHG emissions</b> due to a decreased use of coal across the region. <sup>e</sup>	Air pollution improvements may encourage stronger pollution and health measures, shifting toward clean energy. Drops in GHG emissions will help demonstrate direct emission correlations with coal use. This may influence regions to adopt coal phase-out policies. India's has seen its first drop in CO <sub>2</sub> emissions in thirty-seven years. <sup>f</sup>	In response, Asia's strong coal lobby may push for weakened environmental and air pollution regulations. This is riskier during crisis mode when new governmental policies are being made with diminished scrutiny.
<b>Drop in coal imports and exports</b> due to falling demand and volatile financial market conditions.	Coal production may be stalled, and coal mine expansions delayed. The delayed expansions of two mines in Vietnam are estimated to reduce coal production by 30 per cent. <sup>g</sup> Potential subsequent closures of coal ports.	Countries may be able to secure surplus coal at knocked-down prices. In March 2020, Vietnam picked up Indonesian and South African cargoes intended for India at a cheaper price. <sup>h</sup>

Table 1 *Continued*

Covid-19 Impacts on Coal	Opportunities	Risks
Coal has become the world's most expensive fossil fuel due to the crude price collapse as Covid-19 has triggered a crude oil oversupply. <sup>i</sup>	A high coal price can incentivize a switch of investments to clean energy alternatives. Demonstrating the employment potential of green jobs could also shift discourse toward coal transition and moratoria. The issue of stranded assets is exacerbated.	Investments may switch coal power generation to natural gas.
Decreased availability of international coal finance and cross-border disruption to supply chains is worsening the economics for existing coal and causing delays in coal plant construction.	The slowdown in new constructions may destabilize the global coal complex, including equipment manufacturing in China and Japan, and thus weaken future lock-in. Fifteen coal plants (13 GW), mostly across Asia, are delayed due to workforce or supply chain issues. <sup>j</sup> Lower availability of capital and trade may open the potential for coal moratoria and help drive an end to coal finance.	Loss-making coal proponents will lobby to receive bailouts and stimulus packages. South Korean coal plant manufacturer Doosan Heavy received a USD 3 billion bailout in May 2020. <sup>k</sup> Lack of private capital may drive ECAs to fill the void and finance more coal projects overseas.

<sup>a</sup> “Global Energy Review 2020,” International Energy Agency (IEA), April 2020, <https://www.iea.org/reports/global-energy-review-2020>.

<sup>b</sup> Nicholas, “IEEFA update.”

<sup>c</sup> “Coal and Coronavirus – Coal Plants,” Global Energy Monitor (GEM) Wiki, 21 May 2020, [https://www.gem.wiki/Coal\\_and\\_Coronavirus#Coal\\_plants](https://www.gem.wiki/Coal_and_Coronavirus#Coal_plants).

<sup>d</sup> “Coal Plants,” GEM.

<sup>e</sup> Josh Gabbatiss, “IEA: Coronavirus impact on CO2 emissions six times larger than 2008 financial crisis,” Carbon Brief, 3 April 2020, <https://www.carbonbrief.org/iea-coronavirus-impact-on-co2-emissions-six-times-larger-than-financial-crisis>.

<sup>f</sup> Justin Rowlett, “India’s carbon emissions fall for first time in four decades,” *BBC News*, 12 May 2020.

<sup>g</sup> “Coal Mine Impacts from COVID-19 – Vietnam,” GEM Wiki, last modified 3 June 2020, [https://www.gem.wiki/Coal\\_Mine\\_Impacts\\_from\\_COVID-19#Vietnam](https://www.gem.wiki/Coal_Mine_Impacts_from_COVID-19#Vietnam).

<sup>h</sup> “Vietnam’s April coal imports jump to record high,” *Argus*, 14 May 2020, <https://www.argusmedia.com/en/news/2105236-vietnams-april-coal-imports-jump-to-record-high>.

<sup>i</sup> Dan Murtaugh, “Coal Is Now the World’s Most Expensive Fossil Fuel,” *Bloomberg Green*, 23 March 2020.

<sup>j</sup> “Coal and Coronavirus,” GEM Wiki, edited 21 May 2020, [https://www.gem.wiki/Coal\\_and\\_Coronavirus](https://www.gem.wiki/Coal_and_Coronavirus).

<sup>k</sup> “Doosan Heavy I&C gets another \$1 billion, raising total to state bailout to near \$3 billion,” *Pulse News*, 2 June 2020, <https://pulsenews.co.kr/view.php?year=2020&no=564186>.

To ensure Paris alignment, governments across Asia should initiate a moratorium on new coal plant construction and permitting while they prioritize responses to the Covid-19 crisis. In the medium to longer term, economic stimulus should not be used to boost the coal industry, as it will lock countries into environmentally and financially unsustainable coal power. Instead it must be directed to renewables, the cheapest source of new energy compared to coal in virtually every market.<sup>53</sup> Policy-makers must also ensure that economic stimulus supports a well-structured just transition for coal workers and the maintenance of existing environmental standards, targets, and laws.

As governments develop long-term stimulus packages, they could also end coal finance while stepping up financial and technical support for renewables and the retire-and-replace agenda for existing coal plants. For example, twenty-two coal projects under China's Belt and Road Initiative are still awaiting approval.<sup>54</sup> With the economic fallout of Covid-19, China has an opportunity to cancel these coal projects and redirect investment to clean energy. Japan's economic stimulus package mentions "driving the transition to zero-carbon society."<sup>55</sup> This sentiment must be applied to the core program of Japan's export finance. However, the temptation to use ECAs to "jump-start" economies, irrespective of climate consequences, has proved strong. Covid-19 economic measures have included relaxed conditionalities,<sup>56</sup> no exclusions for oil and gas,<sup>57</sup> fossil fuel bailouts,<sup>58</sup> emergency loans to coal original equipment manufacturers (OEMs),<sup>59</sup> and condition-free support to airlines.<sup>60</sup>

<sup>53</sup> "How to waste over half a trillion dollars," Carbon Tracker, 12 March 2020, <https://carbontracker.org/reports/how-to-waste-over-half-a-trillion-dollars/>.

<sup>54</sup> "The Belt and Road's Decarbonization Dilemma," *Quartz*, <https://qz.com/1760615/china-quits-coal-at-home-but-promotes-the-fossil-fuel-in-developing-countries/>.

<sup>55</sup> "About 'New coronavirus infectious disease emergency economic measures,'" Cabinet of Japan, 7 April 2020, [https://www5.cao.go.jp/keizai1/keizaitaisaku/2020/20200407\\_taisaku.pdf](https://www5.cao.go.jp/keizai1/keizaitaisaku/2020/20200407_taisaku.pdf).

<sup>56</sup> "Extra measures to keep trade flows going," Rijksoverheid, 26 March 2020, <https://www.rijksoverheid.nl/actueel/nieuws/2020/03/26/extra-maatregelen-om-handelsstromen-op-gang-te-houden>.

<sup>57</sup> "Corona Crisis Support Measures," Atradius Dutch State Business, accessed 8 June 2020, <https://atradiusdutchstatebusiness.nl/nl/nieuws/maatregelen-steunpakket-corona-crisis.html>.

<sup>58</sup> "Canada's COVID-19 Economic Response Plan," Government of Canada, 6 May 2020, <https://www.canada.ca/en/departement-finance/programmes/financier-sector-policy/business-credit-availability-program.html>.

<sup>59</sup> Basten Gokkon, "Green groups target South Korea's bailout of coal power plant builder," *Mongabay*, 10 April 2020, <https://news.mongabay.com/2020/04/south-korea-doosan-heavy-coal-power-bailout-covid19-indonesia/>.

<sup>60</sup> William Wikes, "No Green Strings Attached in Lufthansa's Bailout Package," *Bloomberg|Quint*, 27 May 2020.

#### 4. ECA Governance and Environmental Regulation

ECAs are understudied entities. Since the economic and international relations literatures treat ECAs so thinly,<sup>61</sup> it is no surprise that the secondary legal literature on ECAs is practically absent.<sup>62</sup> That said, ECAs are regulated by a substantial and evolving body of positive law. This regime—outlined in the following—has the capacity to serve as a constraint on Covid-19 responses which fail to take account of their environmental consequences.

##### A. OECD Regulation and the Paris Agreement

The central instrument for regulating ECAs is the 1978 Organisation for Economic Co-operation and Development (OECD) Arrangement on Officially Supported Export Credits (“the Arrangement”),<sup>63</sup> which constrains subsidies and potential trade distortions arising from ECA support. This is principally an instrument of trade law, which aims to buttress a global trade system allowing exporters to compete on a level playing field and carves out an exception under anti-subsidy World Trade Organization rules. The Council Recommendation on *Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence*<sup>64</sup> (“Common Approaches”) was added in 2003, setting out measures to address, among others, potential environmental and social impacts of projects seeking official export credit support. Supplementing the Arrangement are six “Sector Understandings.” For present purposes, 2016’s Annex VI Sector Understanding on Export Credits for Coal-Fired Electricity Generation Projects (CFSU) is most relevant. The CFSU limits export credit support for new coal-fired power plants and prohibits OECD ECAs from supporting coal plants unless they use ultra-supercritical technology<sup>65</sup> or are smaller plants in the poorest countries (less than 300 MW for subcritical and less than 500 MW for supercritical).

<sup>61</sup> As a welcome counterexample, see Kristen Hopewell, “Power Transitions and Global Trade Governance: The Impact of a Rising China on the Export Credit Regime,” in *Regulation & Governance* (2019), <https://doi.org/10.1111/rego.12253>.

<sup>62</sup> Some commercial law texts consider export credit guarantee documentation—see Eva Lomnicka, “Export Credit Guarantees,” in Michael Bridge ed. *Benjamin’s Sale of Goods*, 10th ed., (Sweet & Maxwell 2017) – but environmental considerations are entirely untreated.

<sup>63</sup> “Arrangement on Officially Supported Export Credits,” Arrangement and Sector Understandings, OECD, accessed 8 June 2020, <http://www.oecd.org/tad/xcred/theexportcreditsarrangementtext.htm>.

<sup>64</sup> “Environmental and social due diligence,” Environmental and social due diligence, OECD, accessed 8 June 2020, <http://www.oecd.org/trade/topics/export-credits/environmental-and-social-due-diligence/>.

<sup>65</sup> That is, a marginally more efficient type of boiler used in thermal power production.

The Common Approaches, as presently constituted, are widely recognized as inadequate to the task of decarbonizing ECAs.<sup>66</sup> Many OECD ECAs structure their support (e.g., by use of foreign investment loan or development finance products) to avoid coming within the scope of the Common Approaches. Moreover, the share of Arrangement activity by participants to the OECD Arrangement was in 1999 at approximately 100 per cent—it now stands at 36 per cent.<sup>67</sup> Its importance has diminished as non-OECD ECA finance (principally from China) has increased exponentially. Japan and South Korea are Asia’s only members, and so the only two Asian jurisdictions subject to the OECD’s treaty regime. Note that China’s official export and trade-related support in 2018 totaled USD 64.2 billion,<sup>68</sup> yet it is entirely unencumbered by the Arrangement.

Furthermore, Japan and South Korea have been particularly adept at interpreting the CFSU to their best advantage, permitting large-scale financing of new CFPP in Asia.<sup>69</sup> For example, excluded CFPP can be justified on the grounds of grandfathering, prior EIAs, or the non-prescription of finance for coal mining, transportation, and other coal infrastructure. Above all, the CFSU fails to adhere with the obligations of the Paris Agreement. For these reasons, the CFSU was due to be revised by June 2020. The goal of the revision was to strengthen its contribution to the “common goal of addressing climate change and to continue phasing down official support for coal-fired power plants.”<sup>70</sup>

## B. Litigating ECA-Funded Projects

Notwithstanding the shortcomings of the Common Approaches, ECAs remain heavily regulated. As noted earlier, the Paris Agreement, ratified by all Asian states, commits parties to reduce their greenhouse gas emissions to limit global temperature rises “to well below 2°C.”<sup>71</sup> It also contains a number of provisions specifically relevant to export finance, by “making finance flows consistent with a pathway toward low greenhouse gas emissions and climate-resilient

<sup>66</sup> Tucker et al., “Still Digging.”

<sup>67</sup> *Report to the US Congress on Global Export Credit Competition*, Export-Import Bank of the United States, June 2019, at 31, [https://www.exim.gov/sites/default/files/reports/competitiveness\\_reports/2019/EXIM2019CompetitivenessReport-final.pdf](https://www.exim.gov/sites/default/files/reports/competitiveness_reports/2019/EXIM2019CompetitivenessReport-final.pdf).

<sup>68</sup> *Report to the US Congress*, EIB US, 16.

<sup>69</sup> Tucker et al., “Still Digging.”

<sup>70</sup> *Arrangement on Officially Supported Export Credits*, Trade and Agriculture Directorate/Participants to the Arrangement on Officially Supported Export Credits, OECD, 15 January 2020, at 111, [http://oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/pg\(2020\)1](http://oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/pg(2020)1).

<sup>71</sup> *Paris Agreement*, 2015, art. 2(1)(a).

development.”<sup>72</sup> States parties are required to act compatibly with these commitments, the strength of which was recently elucidated by the Court of Appeal of England and Wales,<sup>73</sup> giving a hint as to how Article 2’s temperature target could be interpreted in other domestic courts. The case—which concerned the proposed expansion of London’s Heathrow airport—challenged the planning authority’s approval of the expansion. The question for the court was whether the Paris temperature target or the UK government’s policy commitment to a net-zero target formed any part of relevant government policy within the meaning of Section 5(8) of the Planning Act.<sup>74</sup>

The court answered in the affirmative.<sup>75</sup> Of course, other legal systems are not bound by English judicial precedents. Nonetheless, when determining whether and how Article 2 of the Paris Agreement is to be interpreted, other courts, particularly in common law jurisdictions in Asia, will be able to rely the Heathrow case as a persuasive if not binding precedent for the use of the Paris Agreement in domestic public law. A similar case—in that it successfully challenged a high-carbon development on the basis of ordinary planning law—is *Save Lamu v. NEMA*.<sup>76</sup> Here, the Kenyan National Environmental Tribunal revoked the license for a Chinese-backed coal-fired power plant that had been approved by the National Environmental Management Authority. The Tribunal based its decision on the environmental concerns which flowed from an incomplete and insufficient environmental impact assessment (EIA), and a lack of proper and meaningful public participation in the decision-making.

Both cases are salient for jurisdictions in Asia. The Heathrow case shows that despite the limits of the OECD Arrangement and Common Approaches, high-carbon ECA-funded projects may yet be vulnerable if they fail to adequately consider the interaction of domestic climate law and policy with Paris’s temperature target (Article 2). The *Lamu* case is arguably even more significant, dealing a legal blow to the high-carbon ambitions of the Belt and Road Initiative.<sup>77</sup> At the most basic level, it demonstrates the abiding utility of EIAs. Designed to provide

<sup>72</sup> *Paris Agreement*, 2015, art. 2(1)(a).

<sup>73</sup> *Plan B Earth and Others v. Secretary of State for Transport* [2020] EWCA Civ. 214 (the “Heathrow case”).

<sup>74</sup> Pursuant to section 5(8) of the *UK Planning Act, 2008*, such policies must include “an explanation of how the policy . . . takes account of Government policy relating to . . . climate change.” *UK Planning Act, 2008* c. 29, s. 5(8).

<sup>75</sup> See Ghaleigh, “Paris Agreement, Article 2: Aims, Objectives and Principles.”

<sup>76</sup> *Save Lamu v. National Environmental Management Authority*, 2019 NET 196. Judgment available at [https://elaw.org/system/files/attachments/publicresource/KE\\_Lamu\\_coal\\_Judgement\\_26.6.19.pdf](https://elaw.org/system/files/attachments/publicresource/KE_Lamu_coal_Judgement_26.6.19.pdf). See also “Kenya halts Lamu coal power project at World Heritage Site,” *BBC News*, 26 June 2019.

<sup>77</sup> Christian Shepherd, “China’s Belt and Road Urged to Take Green Route,” *Financial Times*, 5 June 2020.

decision-makers with a comprehensive view of a project's impacts and allow them to be fully weighed against other factors, EIAs can serve as a powerful tool against investments that are not scientifically justifiable. As noted previously in section 3, new coal developments need to clear ever-higher barriers—financial, fiscal, and environmental—that may prove insurmountable. The *Lamu* case demonstrates that even in jurisdictions with weaker systems of governance<sup>78</sup> and faced with powerful investors, EIAs can be robust regulatory devices.

### C. Material Risk and Stranded Assets

Beyond litigation, the legal technologies of company and financial law and the dual pillars of material risk and stranded assets provide additional legal tools to guide and supervise high-carbon investments within the four corners of Paris Agreement. Here, the focus is on the “material financial risk” to fossil fuel companies, financial institutions, and legal persons that invest in high-carbon projects; and the risk that carbon-intensive assets will become “stranded assets” that are “prematurely decommissioned, underutilized, or subject to costly retrofitting.”<sup>79</sup> Furthermore, “this stranding would likely have the strongest impact on the coal sector in Asia, where 64% of current and 65% of planned committed emissions are located, most of it in coal-fired generators.”<sup>80</sup> The risk for investors in coal power is that their financing risks become non-performing and their assets stranded due to low plant utilization as zero-marginal cost renewables grow and air pollution and carbon emissions become ever more regulated.

Legal concerns regarding stranded assets can take various forms. One arises from the approach of activist shareholders to apply pressure on company boards. Ordinarily the preserve of hedge funds challenging executive remuneration or business strategies, activist shareholders in the climate mould aim to mobilize public support against fossil fuel corporates authorizing high-capital-expenditure projects that risk of becoming stranded. Shareholder resolutions would seek to require directors to cease funding a project which risks becoming stranded, focussing investors' minds on the attendant risks. An allied approach focusses on directors' duties and potential liability for authorizing projects at risk of becoming “stranded assets”—a matter of concern for directors and their insurers. A third limb addresses corporate reporting obligations and shareholder

<sup>78</sup> “Kenya,” WJP Rule of Law Index, World Justice Project (WJP), accessed 8 June 2020, <https://worldjusticeproject.org/rule-of-law-index/country/Kenya>.

<sup>79</sup> Alexander Pfeiffer et al., “Committed Emissions from Existing and Planned Power Plants and Asset Stranding Required to Meet the Paris Agreement,” *Environmental Research Letters* 13, no. 5, (2018): 2.

<sup>80</sup> Pfeiffer et al., “Committed Emissions,” 9.

complaints to regulators based on the failure of boards to report adequately on climate risk, especially on stranded assets.

Some of these approaches have been canvassed in climate litigation research, but not from the perspective of stranded assets<sup>81</sup>—nor are they common in Asia. One exception, in the context of Covid-19 and ECA high-carbon investments has arisen in South Korea in relation to its leading OEM, Doosan Heavy Industries.<sup>82</sup> On 26 March 2020, Korea Development Bank and Export-Import Bank of Korea (the Korean ECA) loaned KRW 1 trillion (c. USD 850 million) to Doosan Heavy Industries. Doosan has long faced serious financial challenges,<sup>83</sup> and its serial engagement in coal-fired power plant construction in Indonesia<sup>84</sup> and Vietnam especially is interpreted as an effort to soak up its excess capacity. As a major beneficiary of the Korean post-Covid-19 stimulus package, the loan has been characterized as inconsistent with the Korean state’s domestic and international climate obligations and a “waste of valuable taxpayer money on an industry that is in obvious and irreversible decline.”<sup>85</sup> Litigation efforts have been spearheaded by the nongovernmental organization Solutions For Our Climate, which has led a series of interventions against the South Korean export credit agency, and coal developments it has supported in the region.<sup>86</sup> These actions are being undertaken for a variety of reasons: to raise scrutiny within the organizations, to engage with board of directors of utilities and highlight shareholder liabilities, to demonstrate shareholder opinions by making stranded asset-based complaints against boards,<sup>87</sup> and to seek audit requests from the Government Audit Office.<sup>88</sup> Outcomes have been significant, contributing to delays of six months (at the time of writing) to the Jawa 9 and 10 project; Korea Electric Power Corporation has been unable to submit an investment decision to its board owing to the stranding risks which have been brought to the board’s attention.

<sup>81</sup> Javier Solana, “Climate Litigation in Financial Markets: A Typology,” *Transnational Environmental Law* 9(1) (2019): 1.

<sup>82</sup> Basten Gokkon, “Green Groups.”

<sup>83</sup> Hyun-bin Kim, “Doosan Heavy Struggling to Stay Afloat,” *The Korea Times*, 15 March 2020, [http://www.koreatimes.co.kr/www/nation/2020/03/515\\_286212.html](http://www.koreatimes.co.kr/www/nation/2020/03/515_286212.html).

<sup>84</sup> For example, Jawa 9 and 10 CFPP on the island of Java.

<sup>85</sup> See letter of 8 April 2020 from a coalition of leading ENGOs to the Korean Government: Friends of the Earth et al., “Re: Concerns about Doosan Heavy Bailout,” [https://drive.google.com/file/d/1X5CiWkH3ZXuL8HgVGWDTdw-j9RPXH\\_Gy/view](https://drive.google.com/file/d/1X5CiWkH3ZXuL8HgVGWDTdw-j9RPXH_Gy/view).

<sup>86</sup> “For Our Climate – Highlight the Solutions,” Solutions for Our Climate, accessed 8 June 2020, <http://www.forourclimate.org/>.

<sup>87</sup> Solutions for Our Climate, “Indonesians file petition against Korea’s public banks to block coal power project,” *Eco-business*, 3 September 2019, <https://www.eco-business.com/press-releases/indonesians-file-petition-against-koreas-public-banks-to-block-coal-power-project/>.

<sup>88</sup> Park Ki-Yong, “Supporting coal power generation Doosan Heavy Industries & Construction with public financing 2.4 trillion,” 6 May 2020, <http://www.hani.co.kr/arti/society/environment/943809.html>.



Activists in Japan have also deployed company law tools against coal financing. In a parallel development to those in South Korea, major investors in Japan's Mizuho Financial Group have backed a shareholder motion urging the bank to cut its lending for coal and other fossil fuels. In a first for Japan, investors with nearly USD 200 billion in assets holding shares in Mizuho have launched a shareholder climate change resolution.<sup>89</sup> Quite apart from the novelty of the action, it cuts across various commonly held tropes of Japanese company law—that it is passive, deferential, and avoids conflict—stereotypes that are increasingly under assault.<sup>90</sup> In the context of Covid-19, this presents another avenue in which coal investment may be controlled by corporate law.

## 5. Conclusion

Covid-19 has overturned numerous verities. This is as true for climate action as it has been, tragically, for public health. The idea that UK power generation could be wholly coal-free for weeks on end—for the first time since the Industrial Revolution—would have been fanciful pre-Covid-19;<sup>91</sup> likewise that in President Trump's United States renewables could contribute more to the grid than coal<sup>92</sup> or that megacities from Delhi to Beijing and Bangkok could be enjoying clean and safe air.<sup>93</sup> Unknown from a climate perspective is how “sticky” these changes will be. Will they contribute to the resetting of global economies and societies to a low-carbon transition, consistent with the requirement of science? Or will we witness a bounce-back, a reversion to the carbon budget-busting trajectories of recent decades? While early indications are not positive,<sup>94</sup> the Covid-19 crisis presents an opportunity for governments

<sup>89</sup> Aaron Sheldrick, “Mizuho faces shareholder climate resolution, in first for Japan,” *Reuters*, 16 March 2020.

<sup>90</sup> Masafumi Nakahigashi and Dan W. Puchniak, “Land of the Rising Derivative Action,” in Dan W. Puchniak et al. eds., *The Derivative Action in Asia: A Comparative and Functional Approach* (Cambridge, 2012); Frank K. Upham, “Stealth Activism: Norm Formation by Japanese Courts,” *Washington University Law Review* 88, no. 6/5 (2011); Navraj Singh Ghaleigh, “Neither Legal Nor Political? Bureaucratic Constitutionalism in Japanese Law,” *King's Law Journal* 26, no. 2, (2015).

<sup>91</sup> Jillian Ambrose and Niko Kommenda, “Britain Breaks Record for Coal-Free Power Generation,” *The Guardian*, 28 April 2020.

<sup>92</sup> Brad Plumer, “In a First, Renewable Energy Is Poised to Eclipse Coal in U.S.,” *The New York Times*, 13 May 2020.

<sup>93</sup> Hannah Ellis-Petersen et al., “‘It’s positively alpine!’ Disbelief in big cities as air pollution falls,” *The Guardian*, 11 April 2020.

<sup>94</sup> Damian Carrington and Niko Kommenda, “Air pollution in China back to pre-Covid levels and Europe may follow,” *The Guardian*, 3 June 2020.

to wean their economies off coal. Unlike the 2008 financial crisis, the world has more assets, institutions, and legal regimes for delivering positive climate outcomes.<sup>95</sup>

Before the Covid-19 pandemic, the Paris Agreement had been the driving force behind gaining ambitious climate outcomes. However, the Covid-19 crisis has overtaken most political and economic dynamics, and venues and actors for determining climate outcomes are changing. While the Paris process remains vital, climate action will need to be delivered through a Covid-19 lens. Future studies will doubtless consider the impact of Covid-19 on Parties' climate commitments ("nationally determined commitments" or NDCs), due for revision in 2020. The Japan NDC has been accused of backsliding;<sup>96</sup> likewise, Russia<sup>97</sup> and China appear to be delaying.<sup>98</sup> Nor should we ignore the fact that the planet's largest infrastructure project, the Belt and Road Initiative, is deeply questionable across a range of criteria, not least environmental.<sup>99</sup> For lawyers, the challenges associated with legal interventions in China are well known,<sup>100</sup> but programmatic work is underway in fields such as judicial training.<sup>101</sup>

This chapter has argued not only that there is a moral and economic case for Covid-19 responses in Asia to be Paris-aligned, but legal interventions can serve—and, in the case of South Korea, already are serving—to redirect policy. These legal strategies are risky in the age of populism.<sup>102</sup> Given the often-febrile relationship between courts and executives (and indeed the public) in recent years, legal actors need to take pains to avoid judicial overreach. But post-Covid-19 climate interventions can be driven as much by domestic company and

<sup>95</sup> The Paris Agreement on Climate Change, the PPCA, the Task Force on Climate-related Financial Disclosures, and the EU taxonomy for Sustainable Activities, etc.

<sup>96</sup> Shekhar Deepak Singh, "Japan's woeful climate plan amounts to science denial," *Climate Home News*, 3 April 2020, <https://www.climatechangenews.com/2020/04/03/japans-woeful-climate-plan-amounts-science-denial/>.

<sup>97</sup> Katherine Ross, "Russia's Proposed Climate Plan Means Higher Emissions Through 2050," World Resources Institute, 13 April 2020, <https://www.wri.org/blog/2020/04/russia-s-proposed-climate-plan-means-higher-emissions-through-2050>.

<sup>98</sup> Chloé Farand, "China may delay submitting climate plans amid economic slowdown," *Climate Home News*, 13 April 2020, <https://www.climatechangenews.com/2020/04/13/china-may-delay-submitting-climate-plans-amid-economic-slowdown/>.

<sup>99</sup> Richard Hardiman, "Environmental Considerations of the Belt and Road Initiative," in Francisco B.S. José Leandro and Paulo Afonso B. Duarte eds., *The Belt and Road Initiative* (Palgrave, 2020).

<sup>100</sup> Navraj Singh Ghaleigh, "No Visible Means of Legal Support: China's CCS Regime," in *Carbon Capture and Storage*, eds., Ian Havercroft, Richard Macrory, and Richard B. Stewart (Hart Publishing, 2018); see also citations therein.

<sup>101</sup> "Top China judges visit UK for environmental law training," *Client Earth*, 13 September 2019, <https://www.clientearth.org/top-china-judges-visit-uk-for-environmental-law-training/>.

<sup>102</sup> Neil Walker, "Populism and Constitutional Tension," *International Journal of Constitutional Law* 17(2) 2019.

financial law as by public international law-inspired environmental law. As demonstrated, these strategies can be based on legal norms originating in the global South and advanced Asian economies. This is not the ideational imperialism of human rights law, but legal systems providing domestic grounds to take action on matters of common concern to humankind.

# Southeast Asian Workers in a Just-in-Time Pandemic

*Helen Lansdowne\* and James Lawson\*\**

## 1. Introduction

Covid-19 hit the world with unprecedented speed and scale. Never had such dense and extensive supply chains been so disrupted. Cruelly coinciding with the crisis, the privileged in isolation and the exposed “essential workers” alike experienced clear skies.<sup>1</sup> That temporary cut in pollutants symbolized the cost of business-as-usual; the suffering it accompanied underscored the cost of abandoning the latter without a plan.

Like the blue skies, the pandemic made the costs and benefits of recent growth strategies stand out with greater clarity. First, while Covid-19 has felled some well-travelled elites, it is no microbial leveler: instead, it has heightened (and intensified) existing inequities. Second, the pandemic showed (again) that the just-in-time (JIT) economy can be a remarkable conduit of disease.<sup>2</sup>

\* Associate Director, Centre for Asia-Pacific Initiatives, University of Victoria & Faculty Member, Department of Social Sciences, Camosun College.

\*\* Associate Professor, Department of Political Science & Director, Human Dimensions of Climate Change, University of Victoria.

<sup>1</sup> Jeff McMahon, “Coronavirus Lockdown May Save More Lives by Preventing Pollution than by Preventing Infection,” *Forbes*, 11 March 2020, <https://www.forbes.com/sites/jeffmcmahon/2020/03/11/coronavirus-lockdown-may-save-more-lives-from-pollution-and-climate-than-from-virus/#41108d375764>; “In photos: A look at smog levels around the World before and after Coronavirus Lockdowns,” *Globe and Mail*, 22 April 2020, <https://www.theglobeandmail.com/world/article-in-photos-a-look-at-smog-levels-around-the-world-before-and-after/>.

<sup>2</sup> Kim Moody, “How ‘Just-in-Time’ Capitalism Spread COVID-19 Trade Routes, Transmission, and International Solidarity,” *Spectre*, 8 April 2020, <https://spectrejournal.com/how-just-in-time-capitalism-spread-covid-19/>. World commercial transport as a disease vector is not new. “Research Recommends How to Tackle Spread of HIV/AIDS by African Truckers,” *States News Service*, 15 October 2013, <https://advance-lexis-com.ezproxy.library.uvic.ca/api/document?collection=news&id=urn:contentItem:59KG-5TX1-JCBF-S121-00000-00&context=1516831>; Y. Apostolopoulos and S. Sönmez, “Tracing the Diffusion of Infectious Diseases in the Transport Sector,” in Y. Apostolopoulos and S. Sönmez eds., *Population Mobility and Infectious Disease* (Boston: Springer, 2007); Parag Khanna, “Covid-19 Is Traveling along the New Silk Road,” *Wired*, 28 February 2020. <https://www.wired.com/story/covid-19-is-traveling-along-the-new-silk-road/>.

We use “JIT” in an extended sense, beyond the well-known production and logistics revolution at its core. In our sense, the JIT economy comprises at least three interrelated socio-economic patterns: (1) the heightened volume and speed of inter-regional trade and travel; (2) the accelerated concentration of populations, particularly around new production centres of long supply chains, encroaching on new ecosystems in the process; and (3) competitive conditions between states that sustain budgetary and policy pressures on a wide range of social institutions. The latter confine and cluster people, often to the point and under conditions that their proximity encourages disease.

Accelerated inter-regional trade and travel worry us, not for protectionist or xenophobic reasons, but because people rarely travel alone. Indeed, they now travel so often and so quickly that they more readily transmit their microbial travel companions. In other words, other creatures usually accompany travelling humans as “portmanteau biota” (Crosby).<sup>3</sup> These fellow travellers—domestic animals, plants, pests, parasites, and pathogens—often independently disrupt the societies they meet because they disrupt existing ecological or inter-species relations on which those societies depend.

The exact consequences of this depend on context. For instance, Covid-19 can pass via asymptomatic carriers and by droplet or aerosol transmission. It therefore passes through the general population more readily than HIV/AIDS or SARS but survives for limited times on goods and other surfaces. Other pathogens and invasive species would have different effects while still exhibiting the “portmanteau” pattern. The Black Death, for instance, almost certainly accompanied rats and fleas carried in ship-borne cargo.

Social context also matters. Alfred Crosby’s “ecological imperialism” brought invasive species, pests, and contagions that eased the way for conquest and colonization. But portmanteau biota also weakened empires and nudged new orders into being.<sup>4</sup> *Versinia pestis*, the Black Death, weakened the late Roman Empire (541–542 CE)<sup>5</sup> and Western feudalism (beginning 1347–1348 CE).<sup>6</sup>

If disease often shares a geography with world trade, it can also accelerate amid intense human clustering. This appears to be true, both at production sites and at the “reproduction” (“care”) sites we describe as “disciplinary” or “total”

<sup>3</sup> Alfred W. Crosby, *Ecological Imperialism: The Biological Expansion of Europe, 900–1900*, passim, esp. 89–90 (Cambridge: Cambridge University Press, 1986).

<sup>4</sup> Ariane Nicolas, “Peste, grippe espagnole . . . Les grandes pandémies ont-elles accouché d’un «monde nouveau»?” *Slate*, 6 April 2020, [http://www.slate.fr/story/189198/peste-grippe-espagnole-grandes-pandemies-lecons-histoire-coronavirus-monde-nouveau?utm\\_medium=Social&utm\\_source=Facebook#Echobox=1586152469](http://www.slate.fr/story/189198/peste-grippe-espagnole-grandes-pandemies-lecons-histoire-coronavirus-monde-nouveau?utm_medium=Social&utm_source=Facebook#Echobox=1586152469); Peter Farkopan, *The Silk Roads: A New History of the World* (New York: Vintage, 2015), 182–190.

<sup>5</sup> John Horgan, “Justinian’s Plague (541–542 CE),” *Ancient History Encyclopedia*, 26 December 2013, <https://www.ancient.eu/article/782/justinians-plague-541-542-ce/>.

<sup>6</sup> Norman F. Cantor, *In the Wake of the Plague: The Black Death and the World It Made* (New York: Harper, 2002).

institutions.<sup>7</sup> At least two aspects of this are worth attention. First, crowding any species can ease disease transmission, whether in a monocrop plantation, in a seniors' home, or in workers' dormitories. Second, urban expansion can drive pathogens from existing host species and ecological niches, accelerate their mutation, and shift them to new hosts.<sup>8</sup>

Finally, alongside accelerations and greater volumes along trade corridors, and crowding at production sites and care facilities, the conditions under which crowding occurs can worsen under budgetary pressures that are intensified under the competitive austerity and structural adjustment that the JIT economy encourages.

This chapter examines points where this global economy, Covid-19, and Southeast Asian labour interact. These intersections tell us some important truths, both about the JIT economy and about more general consequences of the mobility of humans and their "fellow-travellers." Southeast Asian workers, whether labouring as migrant workers in Singapore, Malaysia, and Thailand or labouring at home, supply relatively cheap wares for the world. Many experience confined living and working conditions, where disease transmission can accelerate.<sup>9</sup> Filipino and Vietnamese workers provide essential services to Canadian patients in crowded and ill-managed long-term care homes. Southeast Asian workers are also prominent along the long transportation routes of modern commerce. Vulnerability through crowding characterizes work of many kinds.

Our approach in this chapter reverses some conventions. First, we begin not with nation-states but with transport corridors (highways, sea-routes, etc.), production hubs (industrial parks, special economic zones, etc.), and sites of crowding in "total" institutions (hospitals, prisons, seniors homes, etc.).<sup>10</sup> These sites provide a variety of unhealthy conditions. Second, we focus not on decision-making elites, but on the already marginalized, among the hardest hit economically and medically in this pandemic. Third, we investigate both Southeast Asian workers wherever their work carries them and migrant workers in Southeast Asia. We thus prioritize nations, often in transit, not necessarily the boundaries of nation-states.<sup>11</sup>

<sup>7</sup> Nicola Yeates, "Global care chains: a critical introduction," in *Global Migration Perspectives* (Geneva: Global Commission on International Migration (GCIM), 2005).

<sup>8</sup> Gabriele Volpato et al., "Baby Pangolins on My Plate: Possible Lessons to Learn from the Covid-19 Pandemic," *Journal of Ethnobiology and Ethnomedicine* 16, no. 1 (2020): 1–12.

<sup>9</sup> Erving Goffman, *Asylums: essays on the social situation of mental patients and other inmates* (New York: Anchor Books, 1961), 1–12.

<sup>10</sup> Compare Farkopan, *The Silk Roads*, who focuses on neither China nor the West, but the Silk Roads in between.

<sup>11</sup> On this view of "nations," see Giovanni Arrighi, *The Long Twentieth Century: Money, Power, and the Origins of Our Times*, rev. ed. (London: Verso, (1994) 2010), 131–137.

We first sketch the modern JIT economy, a novel economic context for producing goods—and for facilitating pandemics. Next, we sketch some Southeast Asian workers’ experiences in production, care, and transport. We conclude with the often-forgotten material connectedness of humans to other plants and animals. Either inter-species disruption and sudden new interconnections will diminish or they will pose ongoing challenges to this just-in-time world.

## 2. The JIT Economy and Southeast Asian Workers

Just-in-time arrangements are now nearly half a century old; they involve patterns far more specific than the international movement of raw materials, finished goods, and labour. New computerized production and communications technologies and new organizational forms have integrated production, design, and coordination in real time, within and between firms and over great distances.<sup>12</sup> New logistics and financial arrangements orchestrate minutely these grand movements of people and things.<sup>13</sup>

These innovations allowed businesses to spread discrete stages of production over great distances, outsourcing and/or offshoring as needed. Supply chains connected the stages across borders, multiplying and lengthening in the process. Silo effects deepened between the chains, even when moving apparently identical goods. The siloing inhibits easy cross-over flows, even within single sectors.<sup>14</sup>

Consequently, more people travel more frequently and farther, some in privilege, many more in precarity. Intermediate goods and productive machinery flow in greater volume and farther afield, accompanied by transport workers. Single products involve more—and more dispersed—production sites. The quality of job markets and working conditions in single jurisdictions experience increased polarization.<sup>15</sup>

<sup>12</sup> Raphael Kaplinsky, “Forms of Automation,” in *Automation: The Technology and Society* (Harlow: Longman, 1984), 19–35; Harley Shaiken, Stephen Herzenberg, and Sarah Kuhn, “The Work Process under More Flexible Production,” in *Industrial Relations* 25, no. 2 (1986), 167–183; Gary Gereffi, “The Organization of Buyer-Driven Global Commodity Chains: How US Retailers Shape Overseas Production Networks,” in Gary Gereffi and Miguel Korzeniewicz eds., *Commodity Chains and Global Capitalism* (Westport, CN: Greenwood/Praeger, 1994), 95–122; Douglas M. Lambert, “The Supply Chain Management and Logistics Controversy,” in Ann M. Brewer et al. eds., *Handbook of Logistics and Supply Chain Management* (Amsterdam: Pergamon, 2001), 99–126.

<sup>13</sup> Edna Bonacich and Jake B. Wilson, *Getting the Goods: Ports, Labor, and the Logistics Revolution* (Ithaca, NY: Cornell University Press, 2008), 3–22.

<sup>14</sup> J.-P. Rodrigue, T. Luke, and M. Osterholm, “Transportation and Pandemics,” *The Geography of Transport Systems*, accessed 7 May 2020, [www.transportgeography.org/?page\\_id=8869](http://www.transportgeography.org/?page_id=8869).

<sup>15</sup> Sandro Mazzadra and Brett Neilson, *Border as Method: Or the Multiplication of Labor* (Chapel Hill, NC: Duke University Press, 2013); Luc Boltanski and Eve Chiapello, *The New Spirit of Capitalism*, trans. Gregory Elliott (London: Verso, 2005), 217–254.

A distinct rhythm of speed and flexibility accompanies this new geography. Intermodal transport now links trains, trucks, and cargo ships.<sup>16</sup> Airplanes further accelerate delivery of intermediate and final goods. Fewer stockpiled goods and fewer long-term workers are needed at each stage; this frees up capital and thus further accelerates growth.

The new tracking and delivery systems made JIT production and delivery efficient and profitable. Resources and intermediate goods increasingly flowed in batches, as and where needed. Unit transport costs declined; transport both accelerated and multiplied, with the duration of trans-oceanic air travel and even surface trips increasingly outstripping disease incubation periods.<sup>17</sup> Producer firms multiplied, competing among one another in greater anonymity for contracts with distant designers and retailers.<sup>18</sup> They served far-flung markets, including the older, higher-cost production centres of Europe, North America, the Antipodes, and Japan. In principle, goods, services, and people can now arrive, meet, act together, and depart a given production site, all “just in time.”

Regulatory change facilitated these changes: (1) finance escaped national control, regaining disciplinary authority over manufacturing;<sup>19</sup> (2) bond rating agencies joined international financial institutions in disciplining national policies;<sup>20</sup> (3) states re-gearred business, social, and health policy to compete for investment;<sup>21</sup> (4) new trade regimes expanded corporate rights over intellectual property, financial services, temporary work visas, and the movement of intermediate goods.<sup>22</sup> These changes triggered new spatial arrangements of governance. National border controls, often outsourced, relocated to secure supply-chain facilities far from borders.<sup>23</sup> Competing states multiplied business-friendly regulatory exemptions within, such as in enclaves like Special Economic Zones.<sup>24</sup>

Meanwhile, industry declined in many older industrial centres amid heavy cost competition. Finance, design, and marketing often took the lead, while

<sup>16</sup> Brian Slack, “Intermodal Transportation,” in Ann M. Brewer, Kenneth J. Button, and David A. Hensher eds., *Handbook of Logistics and Supply Chain Management* (Amsterdam: Pergamon, 2001), 141–54.

<sup>17</sup> Rodrigue et al., “Transportation and Pandemics.”

<sup>18</sup> Gereffi, “The Organization.”

<sup>19</sup> Stephen Gill and David Law, *The Global Political Economy: Perspectives, Problems and Policies* (Baltimore: Johns Hopkins University Press, 1988), 174–180.

<sup>20</sup> Timothy J. Sinclair, “Passing judgement: Credit rating processes as regulatory mechanisms of governance in the emerging world order,” *Review of International Political Economy* 1, no. 1 (1994): 133–159.

<sup>21</sup> Bob Jessop, “Towards a Schumpeterian Workfare State? Preliminary Remarks on Post-Fordist Political Economy,” *Studies in Political Economy* 40 (1993): 7–40.

<sup>22</sup> Yeates, “Global care chains.”

<sup>23</sup> Deborah Cowen, *The Deadly Life of Logistics: Mapping Violence in Global Trade* (Minneapolis, MN: University of Minnesota Press, 2014), 53–90.

<sup>24</sup> Mazzadra and Neilson, *Border as Method*, 217–238.



well-paid, secure, semi-skilled jobs declined. Living standards polarized and (for many) became more precarious.<sup>25</sup> Aggregate demand there fragmented and weakened; it relied more on cheap imported mass goods and credit financing and, for the more fortunate, on mounting luxury imports. Social policy shifted to create a competitive business climate through public-sector cost containment and incentivizing the return to work. Families shored up their living standards with dual incomes, or adults working multiple jobs, but that led the more fortunate among them increasingly to demand cheap childcare, eldercare, and other domestic services. In many such places, skilled workers from Southeast Asia met that demand.<sup>26</sup>

Crises reflect what preceded them and foreshadow what follows. The realities outlined just previously, the most recent global “spatio-temporal fix”<sup>27</sup> for capitalism, urgently need stability: they have been stripped of protective stockpiles, backup suppliers, and other “redundancies.”<sup>28</sup> Threats to this stability include pandemics but clearly go further. The 2011 Fukushima disaster devastated communities but also Japan’s global automobile production networks, the pioneers in JIT.<sup>29</sup> International automobile and other supply chains linked to Wuhan, China, have suffered similar fates under Covid-19.<sup>30</sup> Other disruptions are just as significant: social and labour unrest, supplier disruptions, transportation bottlenecks, and *forces majeures*.<sup>31</sup>

Security forces accordingly are called upon to defend<sup>32</sup> this JIT economy: “flexible” accumulation<sup>33</sup> and its “friction-less” flows.<sup>34</sup> This new

<sup>25</sup> Saskia Sassen, *The Global City: New York, London, Tokyo* (Princeton: Princeton University Press, 1991); Leah F. Vosko, *Temporary Work: The Gendered Rise of a Precarious Employment Relationship* (Toronto: University of Toronto Press, 2000); Saori Shibata, “Re-packaging old policies? ‘Abenomics’ and the lack of an alternative growth model for Japan’s political economy,” *Japan Forum* 29 no. 3 (2017): 399–422, <https://doi-org.ezproxy.library.uvic.ca/10.1080/09555803.2017.1284143>; Boltanski and Chiapello, *New Spirit*.

<sup>26</sup> Colette V. Browne and Kathryn L. Braun, “Globalization, Women’s Migration, and the Long-Term-Care Workforce,” *The Gerontologist* 48, no. 1 (February 2008): 16–24, <https://doi-org.ezproxy.library.uvic.ca/10.1093/geront/48.1.16>.

<sup>27</sup> David Harvey, *The Condition of Postmodernity* (London: Oxford University Press, 1989); Bob Jessop, “Spatial Fixes, Temporal Fixes, and Spatio-Temporal Fixes,” in Noel Castree and Derek Gregory eds., *David Harvey: A Critical Reader* (London: Blackwell Publishing, 2006), 142–166.

<sup>28</sup> Bonacich and Wilson, *Getting the Goods*, 244–249.

<sup>29</sup> Yossi Sheffi, *The Power of Resilience: How the Best Companies Manage the Unexpected* (Cambridge, MA: MIT Press, 2015), 22.

<sup>30</sup> Ben Simpfendorfer, Peter Reynolds, and Sean Kennedy, *What Might China’s Recovery Look Like: View from China and Possible Lessons for the World* (Oliver Wyman/SRA Intelligence, 2020), 9–10.

<sup>31</sup> Elizabeth A. Sowers, Paul S. Ciccantell, and David A. Smith, “Labor and Social Movements’ Strategic Usage of the Global Commodity Chain Structure,” in Jake Alimahomed-Wilson and Immanuel Ness eds., *Choke Points: Logistics Workers Disrupting the Global Supply Chain* (London: Pluto Press, 2018).

<sup>32</sup> Deborah Cowen, “A Geography of Logistics: Market Authority and the Security of Supply Chains,” *Annals of the Association of American Geographers* 100, no. 3 (2010): 600–620; Brett Neilson, “Five Theses on Understanding Logistics as Power,” *Distinktion* 13, no. 3 (2012): 322–339.

<sup>33</sup> Michael Piore and Charles Sabel, *The Second Industrial Divide* (New York: Basic Books, 1984).

<sup>34</sup> On the utopian character of this aspiration, see Anna Lowenhaupt Tsing, *Friction: An Ethnography of Global Connection* (Princeton: Princeton University Press, 2005).

era has revolutionized millions of lives, very often for the better,<sup>35</sup> but has also generated new risks. New trends followed in perceiving and responding to the latter. After September 11, 2001, JIT economics converged with border security forces.<sup>36</sup> Military, police, and intelligence focused increasingly on “critical infrastructure,” including private assets. Customs officials themselves came under intrusive surveillance;<sup>37</sup> private security forces proliferated.<sup>38</sup> Several pandemics (SARS, MERS, HIV/AIDS) then added public health security to the mix. In part, these extensions of the meaning of security simply reflect policy choices of particularly influential world powers. But in part, JIT simply requires countries and firms with peculiar urgency to contain emerging threats to mounting world flows of people and things.

This new security environment can still sustain “open,” electoral-democratic regimes. Taiwan and South Korea remind us that democracies can respond to pandemics like Covid-19 effectively. But in Southeast Asia, new “national authoritarians” fused profit with security, providing international investors profitable workforces, work discipline, and income inequality: Philippines’ Rodrigo Duterte, Cambodia’s Hun Sen, and Thailand’s Prayut Chan-ocha. This has arguably occurred under a new “Imperial Mode of Living.”<sup>39</sup> While domestic pressures strengthen the strong men, notably in poorer countries,<sup>40</sup> China, the region’s new centre of gravity, poses few questions.<sup>41</sup> Its Belt and Road Initiative (BRI) and loans need regional leaders to secure both them and China’s wider foreign policy. Facing the present pandemic, several Southeast Asian governments have tightened censorship and broadened states of emergency.<sup>42</sup>

One outcome of the JIT economy is that supply chain managers and investors could now make decisions (normally) with little reference to the material circumstances of places, living bodies, or ecological relationships, except as these could be reduced to non-material calculations of comparative advantage. As more things and people moved, both things and labour were priced, bought, and sold as if they could be readily divorced from place-based social and ecological

<sup>35</sup> For individual country profiles of economic development, see “Human Development Index Country Reports,” United Nations Development Programmes, <http://hdr.undp.org/en/content/human-development-index-hdi>.

<sup>36</sup> Daniel Drache, *Borders Matter: Homeland Security and the Search for North America* (Halifax: Fernwood, 2004), 88–109.

<sup>37</sup> Cowen, “Geography of Logistics.”

<sup>38</sup> Cowen, *Deadly Life of Logistics*, 86–87, 156–159.

<sup>39</sup> Ulrich Brand and Markus Wissen, “Global Environmental Politics and the Imperial Mode of Living: Articulations of State-Capital Relations in the Multiple Crisis,” *Globalizations* 9, no. 4 (2012): 547–560.

<sup>40</sup> Wolfram Schaffar et al. eds., “The Political Economy of New Authoritarianism,” *Austrian Journal of South-East Asian Studies* 11, no. 1 (2018): 35–52; 141–148.

<sup>41</sup> Wolfram Schaffar et al., eds. “Political Economy,” 35–52; 141–148.

<sup>42</sup> David Hutt, “SE Asia leaders face Covid-19 legitimacy crisis,” *Asia Times*, 2 April 2020, [https://asiatimes.com/2020/04/se-asia-leaders-face-covid-19-legitimacy-crises/?fbclid=IwAR2PHrcnngWrh-zI3IbQwBpCwCOQ5PJbH8nVKGoUMcXi-VTzVp\\_AJNpZPSE](https://asiatimes.com/2020/04/se-asia-leaders-face-covid-19-legitimacy-crises/?fbclid=IwAR2PHrcnngWrh-zI3IbQwBpCwCOQ5PJbH8nVKGoUMcXi-VTzVp_AJNpZPSE).

relationships. These had destructive implications in their own right. But ecological relationships endure under these circumstances, including those with invasive species, parasites, and pathogens. Living things in transit can infect one another before a voyage ends. If goods do not carry disease themselves, people must still move them, and carrier species may accompany those people.

The Covid-19 shutdown repeats the lessons of avian flu, SARS, HIV/AIDS, and MERS. Two major public health tools for pandemics—lockdowns and contact tracing—interact in opposite ways with the JIT context of high-flow transport corridors, dispersed production nodes, and stressed total institutions.<sup>43</sup> First, since Covid-19 spreads through asymptomatic carriers, lockdowns of human and material flows are common initial response. But extended lockdowns devastate a JIT economy with particular force.<sup>44</sup> A swift lockdown might contain an initial outbreak rapidly, as New Zealand, Vietnam, and Taiwan show. But reopening the economy before an effective vaccine arrives simply reopens the original exposure risk.

Second, if testing were widespread and accurate (important qualifications), contact tracing could likely follow minor Covid-19 outbreaks through many transportation networks important to the JIT economy. This strategy could allow a region to reopen safely. But the testing and monitoring involved need the public roadways, railways, airports, etc., that aggressive lockdowns interrupt. Selective reopening is difficult, while a general reopening before effective vaccination similarly reopens a region to reinfection.

Finally, less developed regions may be less exposed to initial international transmission because their transport infrastructure is relatively weak. But once community infection begins in them, the infrastructural weaknesses will make containment and, above all, contact tracing more difficult. These interactions do not preclude effective policy but suggest the real dilemmas that policy must engage.

### 3. JIT Disease Transmission: The Witness of Southeast Asians

The pre-pandemic world privileged outsourced manufacturing for export, especially in low-cost locations with limited social and environmental commitments: first, in newly industrialized economies, then in reform-era China. Most recently, this pattern came to China's other neighbours, including

<sup>43</sup> James Lawson and Feng Xu, "Emergency Health Policy and SARS in Canada and China: A Foucauldian Approach," *Governance* 20, no. 2 (April 2007): 209–232.

<sup>44</sup> Rodrigue et al., "Transportation and Pandemics."

Southeast Asia.<sup>45</sup> Among the more recent participants in this process, Southeast Asian resources, productive capacity, and workers have recently been providing more and more of the world's material goods. Southeast Asian workers have also been deployed abroad under lean-production conditions in manufacturing, transportation, and care work. As logistics and longshore workers, they have facilitated the transport that knits the JIT global order together. We now consider Covid-19 impacts on workers in JIT production in Cambodia, Vietnam, and Myanmar.

In Cambodia, many economic clusters, production nodes in multiple supply chains, emphasize garment and footwear alongside international tourism. Facing the pandemic, Cambodia's leadership chose not to shut down completely. The New Year holiday postponed, ostensibly to prevent infection in workers' home villages, Cambodia attempted to return to work early. Even earlier, many factories remained open, filling existing contracts, likely tied to international on-line shopping or to retail outlets in China, the first country to reopen. Many production inputs at that point were coming from Chinese suppliers, exemplifying Cambodia's new friendship.<sup>46</sup>

The basis for reopening was tenuous, however. Prosperous Western and Asian markets were deeply compromised. For the more than 100,000 workers at closed factories, as well as tourism workers, the government provided USD 40 per month to each unemployed worker; employers had to contribute USD 30 per month for at least two months.<sup>47</sup> Tourist services remained open—restaurants, shops, some hotels—but as late as the summer of 2020, tourists were few, reducing service-sector employment.

These attempts to restore growth represent the fragility of low-wage growth. Poor factory and service-sector workers must work, sick or not, adding risk to reopening. State support is limited: neither savings nor social welfare are enough to cover rent or food. Public healthcare is weak. Wearing masks helps at workplaces, but social distancing is often difficult. These harsh dilemmas symbolize the pandemic's class character and Cambodia's particular place in global production.<sup>48</sup>

<sup>45</sup> Arrighi, *Long Twentieth Century*, 336–370, esp. 361.

<sup>46</sup> Hun Sirivadh, "China Sending Textiles for Cambodian Factories amid Materials Shortage," VOD, 9 March 2020, <https://vodenglish.news/china-sending-textiles-for-cambodian-factories-amid-materials-shortage/>.

<sup>47</sup> "Office of the Council of Ministers Press Release on the Fighting Against COVID-19 and the Impact on Employment," *EuroCham Cambodia*, 30 April 2020, <https://www.eurocham-cambodia.org/post/718/24-30-APRIL-KEEPING-YOU-INFORMED-RECENT-ANNOUNCEMENTS-BY-THE-ROYAL-GOVERNMENT>.

<sup>48</sup> See, on Cambodia's precarious position vis-à-vis Covid-19, Ly, Hing, and Soy, Chapter 20, this volume.

In April 2020, a World Bank Report on Covid-19 in Asia predicted economic crisis for export-oriented low-cost production.<sup>49</sup> Unemployed tourism workers should expect no early return to mass tourism. Factories for export might resume operations soon. But a pre-vaccine or post-pandemic “return to normal” depends in Cambodia on steady consumption patterns elsewhere. Cambodia’s garment industry had benefitted from improved labour standards thanks to the US-Cambodia Trade Agreement on Textiles and Apparel. From 1999 to 2004, it linked social and labour clauses to US import quotas. Improved labour standards accompanied the 2001 establishment of International Labour Organization (ILO) monitoring (Better Factories Cambodia) and most recently legislated minimum wage increases (2018). However, competitive pressure from regional producers, such as China, Vietnam, Indonesia, Bangladesh, and India, has undermined labour gains. Covid-19 will undoubtedly intensify these pressures as all regional industries scramble for contracts.<sup>50</sup>

Global markets and production networks link goods exporters to the pandemic, including food suppliers. For instance, Vietnam is the second largest global coffee supplier. What happens when the world’s Starbucks franchises close?<sup>51</sup> Home consumption may theoretically compensate for consumption in cafés, but modern consumer and commercial supply chains are often quite separate, even for the same product. Vietnamese coffee farmers with large investments in commercial supply chains may well be left with unsold harvests in 2020, even if world home consumption goes short. Initially, coffee prices under Covid-19 were highly volatile. Since 1989, no International Coffee Agreement had enough influence to stabilize pricing, further exposing farmers to the Covid-19 crisis. The International Coffee Organization warns that the looming global recession could further weaken market demand.<sup>52</sup>

Similarly, harvesting, processing, and exporting of seafood for world restaurants are crucial to Vietnam. What if most purchasing restaurants close? Whole distribution systems are affected—fishers, processors, wholesalers, and

<sup>49</sup> *East Asia and the Pacific in the Time of COVID-19 – Regional Economic Update, April 2020* (Washington: World Bank, 2020), 160.

<sup>50</sup> For a discussion of the impact of TATA and Cambodian labour standards, see Günseli Berik and Yana Van Der Meulen Rodgers, “Options for enforcing labour standards: Lessons from Bangladesh and Cambodia,” *Journal of International Development* 22, no. 1 (4 November 2008): 56–85, <https://onlinelibrary-wiley-com.ezproxy.library.uvic.ca/doi/abs/10.1002/jid.1534>.

<sup>51</sup> John Ballard, “Starbucks Expects COVID-19 to Slash Profits in Half,” accessed through the *Motley Fool* on 16 May 2020, <https://www.fool.com/investing/2020/04/09/starbucks-expects-covid-19-to-slash-profits-in-hal.aspx>; Rodrigue et al., “Transportation and Pandemics.”

<sup>52</sup> Manuel A. Hernandez, Rebecca Pandolph, Christoph Sängler, and Rob Vos, “Volatile coffee prices: COVID-10 and market fundamentals,” International Coffee Organization (ICO) and the International Food Policy Research Institute (IFPRI) May 2020, accessed 1 June 2020, <http://www.ico.org/news/coffee-break-series-2e.pdf>.

transport workers. By late March 2020, Vietnamese seafood exports had fallen by half.<sup>53</sup>

By contrast, Myanmar's international engagement is recent and limited. Their workers may be more protected, both medically and economically. Manufacturing and service workers in tourism will feel the effects faster there, but they remain few. Some 78 per cent of Myanmar's citizens work in rural agriculture; most produce serves domestic consumption.<sup>54</sup> Still other citizens retain rural ties. In the Inle Lake region in Shan State, for example, tourism has made inroads near the Lake. But the surrounding upland farmers still supply local markets. Inle Lake tourist workers may lose jobs to the pandemic but could well return to the relative security of local family farming.<sup>55</sup> All that said, most citizens of Myanmar are poor and healthcare is weak, especially in the countryside.

As elsewhere in the region, Myanmar's political machinations accompany the crisis: perfect conditions for the Tatmadaw to reclaim control, limiting the few rights and freedoms that the National League for Democracy won in 2015. A tight relationship with China, the China-Myanmar Economic Corridor being key to China's BRI, again illustrates global influence in both internal politics and the lives of workers, following specific supply lines.<sup>56</sup>

#### 4. Covid-19, Production Networks, and Migrant Workers

Consider now the roads the virus has travelled, where they parallel the global movements of Southeast Asian migrant workers. Labourers from the region often work and live in crowded, controlled conditions where contagion is more likely. Consider the overseas migrant detention centres, worker dormitories, and facilities where migrant care workers work: diverse "total"<sup>57</sup> or "disciplinary"<sup>58</sup> institutions, all these gather and sort human beings to reform or treat them. These institutionalized populations connect directly to economic

<sup>53</sup> Rachel Mutter, "Vietnam seafood exports crash in wake of 'dizzying' coronavirus spread," accessed through *IntraFish* on 24 March 2020, <https://www.intrafish.com/markets/vietnam-seafood-exports-crash-in-wake-of-dizzying-coronavirus-spread/2-1-779850>.

<sup>54</sup> *East Asia and the Pacific in the Time of COVID-19: Regional Economic Update, April 2020* (Washington: World Bank, 2020), 184.

<sup>55</sup> Personal observations of Lansdowne, June 2016.

<sup>56</sup> See, for an interesting discussion of a Chinese mining project in Chin State, Rainer Einzinberger, "Frontier Capitalism and Politics of Dispossession in Myanmar: The Case of the Mwetaung (Gullu Mual) Nickel Mine in Chin State," in Wolfram Schaffar et al. eds., "The Political Economy of New Authoritarianism," *Austrian Journal of South-East Asian Studies* 11, no. 1 (2020): 13–34.

<sup>57</sup> Erving Goffman, *Asylums: Essays on the social situation of mental patients and other inmates* (New York: Anchor Books, 1961): 1–12.

<sup>58</sup> Michel Foucault, *Discipline & Punish: The Birth of the Prison* (New York: Vintage, 1977).

globalization: migrant labour serves both as the object of “discipline” or as much-needed “disciplinary” staff. Such concentrations of people experience more risks of contagion as employment and social policy intensify precarity in work. Where the coronavirus meets low-cost, corner-cutting facilities, consequences of social policy austerity and privatization, those facilities can become havens of infection and of preventable deaths.<sup>59</sup>

Diasporic labour has staffed long-term care facilities for years in the United Kingdom, the United States, and Canada. The Philippines in particular has built up specialized migrant labour as a critical “export”: remittances contribute some 10 per cent to its GDP.<sup>60</sup> Western facilities have attracted many Filipina workers in many roles that have counted as “essential services” during the crisis. Regardless of education, they are often among the lowest paid in that sector.<sup>61</sup> These workers can face a double jeopardy, their poor circumstances becoming vectors of disease. To make ends meet, some had been working multiple sites: a genuine health policy concern, even though racist and class targeting complicate the debate.<sup>62</sup>

Migrant labour also drives the global economy’s ocean transport. If care work abroad often involves female Southeast Asian labour, seafaring is male-dominated—often heavily Filipino—both on cruise ships and on freighters. These seafarers now face double, if not multiple, jeopardies. Ships are contained spaces, and they readily multiply disease, as publicized outbreaks on cruise ships attest.<sup>63</sup> The arduous work isolates workers for long tours. But during the pandemic, home countries, including the Philippines, blocked their own workers when their contracts ended: by one estimate in May 2020, “100,000 seafarers per month [were] unable to return home or be relieved by new crews because of the pandemic.”<sup>64</sup> Many workers sign new contracts instead, forgoing relative safety

<sup>59</sup> Dan Bilefsky, “How Can It Happen Here? The Shocking Deaths in Canada’s Long-Term Care Homes,” *The New York Times*, 17 April 2020, <https://www.nytimes.com/2020/04/17/world/canada/canada-coronavirus.html>.

<sup>60</sup> “Personal remittances, received (% GDP) – Philippines,” The World Bank, accessed 16 May 2020, <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=PH>.

<sup>61</sup> Colette V. Browne and Kathryn L. Braun, “Globalization, Women’s Migration, and the Long-Term-Care Workforce,” *The Gerontologist* 48, no. 1 (February 2008): 16–24, <https://doi-org.ezproxy.library.uvic.ca/10.1093/geront/48.1.16>. See also Xu and Liu, Chapter 2, this volume.

<sup>62</sup> Warlito Valdez et al., “Filipino Healthcare Workers During COVID-19 and the Importance of Race-Based Analysis” Blog, Broadbent Institute, 1 May 2020, [https://www.broadbentinstitute.ca/filipino\\_healthcare\\_workers\\_during\\_covid19\\_and\\_the\\_importance\\_of\\_race\\_based\\_analysis?utm\\_campaign=april2020\\_bom\\_km&utm\\_medium=email&utm\\_source=broadbent](https://www.broadbentinstitute.ca/filipino_healthcare_workers_during_covid19_and_the_importance_of_race_based_analysis?utm_campaign=april2020_bom_km&utm_medium=email&utm_source=broadbent).

<sup>63</sup> Associated Press, “Stuck on cruise ships around the world during coronavirus outbreak crews beg to go home” *Los Angeles Times*, 9 May 2020, <https://www.latimes.com/world-nation/story/2020-05-09/cruise-ships-coronavirus-crews>; Centre for Disease Control, “COVID 19 and Cruise Ship Travel,” World Bank, accessed 16 May 2020, <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=PH>.

<sup>64</sup> Tamara Baluja, “Seafarers in Canadian ports are unable to return home as countries lock down,” *CBC News*, 4 May 2020, <https://www.cbc.ca/news/canada/british-columbia/seafarers-in-canadian-ports-are-unable-to-return-home-as-countries-lock-down-1.5553172>.

and respite from months at sea. Other Filipino workers reached Manila but were barred from their home communities without local housing or quarantine facilities.<sup>65</sup> As with care work abroad, seafarers' jobs are marginal and highly exploited yet vital to the Filipino economy and to their employers. Despite important non-commercial relationships, these workers experience commodified work, which did not initially reference those relationships. One result is heightened risk of disease, provoking the ILO to publish a clarification to the Maritime Labour Convention of 2006 for best practices during the pandemic.<sup>66</sup>

Migrant workers with temporary status often work in contained and controlled spaces. This deepens exploitation and their vulnerability to disease. In Canada, Covid-19 hit several major meat-packing plants hard.<sup>67</sup> Among their many temporary workers and recent migrants, Vietnamese and Filipino migrants stand out; aging, still relatively prosperous Canadians increasingly avoid such labour. Deemed essential services during the crisis, key plants have insisted that workers turn up and even paid bonuses for perfect attendance. Workers reported that even after the first cases showed up among them, infected employees had to continue work. For those with temporary work permits, unemployment would have meant deportation. Those conditions reportedly contributed to 949 infected workers in just one plant. As with senior care facilities,<sup>68</sup> these outbreaks thus exposed dangerous underlying conditions, also including high injury rates. Covid-19 came knocking, and poor labour conditions and crowding appear to have ushered it in.<sup>69</sup>

The conditions at long-term care facilities, ocean-going ships, and meat-packing plants have been weak points in pandemic responses; for similar reasons, worker dormitories deserve attention. During the pandemic's second strike against Singapore, most infected people were work permit holders in foreign worker dormitories.<sup>70</sup> Factories and construction sites depend heavily on

<sup>65</sup> "ECQ leaves repatriated seafarers stranded in Metro Manila," *Manila Times*, 1 April 2020, accessed May 4, 2020, <https://www.manilatimes.net/2020/04/01/business/maritime-business/ecq-leaves-repatriated-seafarers-stranded-in-metro-manila/708357/>.

<sup>66</sup> "Information note on Maritime labour issues and coronavirus (COVID-19) Including a joint statement of the Officers of the Special Tripartite Committee of the Maritime Labour Convention 2006, as amended," International Labour Organization and International Labour Standards Department (NORMES)/Sectorial Politics Department (SECTOR), Geneva, 7 April 2020, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/briefingnote/wcms\\_741024.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/briefingnote/wcms_741024.pdf).

<sup>67</sup> "Cargill on Probation Union Forcing Cargill to Pay Attention to Worker Safety," United Food and Commercial Workers Local 401, 3 May 2020, <https://gounion.ca/news/cargill-on-probation/>.

<sup>68</sup> Ontario Health Coalition, "COVID-19 UPDATE Tracking of COVID 19 Outbreaks in Health Care Settings," 5 May 2020, <https://www.ontariohealthcoalition.ca/wp-content/uploads/OutbreaksMay5-final.pdf>. Statistics on the virus in long-term care facilities in Canada are collected provincially.

<sup>69</sup> Joel Dryden and Sarah Rieger, "Inside the slaughterhouse," *CBC News*, 6 May 2020, <https://newsinteractives.cbc.ca/longform/cargill-covid19-outbreak>.

<sup>70</sup> "657 New Cases of Covid-19 Infection," Ministry of Health, Singapore, accessed 3 May 2020, <https://www.moh.gov.sg/news-highlights/details/657-new-cases-of-covid-19-infection>.



them in Singapore and across the region.<sup>71</sup> Investigations in Singapore exposed exceptionally cramped and filthy dormitories, “ideal” for viral transmission, despite Singapore’s more visible prosperity.<sup>72</sup> This exposé created an uproar, revealing a previously invisible workforce: the pandemic opened the Pandora’s box in which they lived.<sup>73</sup>

Migrant workers elsewhere in Southeast Asia have undergone exceptional hardships under Covid-19. Thailand and Malaysia, major regional migrant destinations, detained and deported workers; this recalled abrupt deportations during the financial crisis of 1997–1998. These migrant worker populations are exceptionally large, complicating virus containment while they return home. Large-scale deportations of Myanmar migrants in Malaysia and Thailand seriously risked further outbreaks.<sup>74</sup> According to an early ILO report, arbitrary deportations violate international human rights without containing the virus: only a “coherent, effective international approach that leaves no-one behind” would do.<sup>75</sup> Malaysia then ordered mandatory screening for all foreign workers at employers’ expense—some 2 million registered, with more undocumented. Meanwhile, Reuters reported many Malaysians lashing out at foreign workers as virus transmitters.<sup>76</sup> This social “othering” of migrants has many parallels worldwide, policy and population both scapegoating already-vulnerable and further-marginalized working populations.

## 5. Conclusion

Contemporary social structures now depend on millions being unable to afford the things they make; on logistics that privilege low-wage, under-regulated production sites; and on systematic under-resourcing of social institutions. Living standards have risen for millions under the JIT economy,<sup>77</sup> but so have

<sup>71</sup> See De Visser and Straughan, Chapter 15, this volume.

<sup>72</sup> “Bangladeshi workers live in fear as virus hits Singapore dorms,” *Dhaka Tribune*, 9 April 2020, <https://www.dhakatribune.com/world/2020/04/09/bangladeshi-workers-live-in-fear-as-virus-hits-singapore-dorms>.

<sup>73</sup> Hillary Leung, “Singapore Was a Coronavirus Success Story – Until an Outbreak Showed How Vulnerable Workers Can Fall Through the Cracks,” *Time*, 29 April 2020, <https://time.com/5825261/singapore-coronavirus-migrant-workers-inequality/>. See also Chua and Lee, Chapter 8, this volume.

<sup>74</sup> See Oswald and Tun, Chapter 25 this volume.

<sup>75</sup> “The Rights and Health of Refugees, Migrants and Stateless Must be Protected in COVID-19 Response,” *IOM UN Migration*, 31 March 2020, <https://www.iom.int/news/rights-and-health-refugees-migrants-and-stateless-must-be-protected-covid-19-response>.

<sup>76</sup> Rozanna Latiff and A. Ananthalakshmi, “Malaysia detains hundreds of refugees and migrants during virus lockdown – rights groups,” *Reuters*, 1 May 2020, <https://news.yahoo.com/malaysia-detains-hundreds-refugees-migrants-133237619.html>. On targeting of migrant workers as vectors of the virus, see Tayeb and Por, Chapter 22, this volume.

<sup>77</sup> UNDP, *Human Development Index Country Reports*, <http://hdr.undp.org/en/content/human-development-index-hdi>.

these social problems. Modern logistics, production systems, and social policy have also accompanied the revival of serious contagious disease. National and international transportation and production hubs, including the pandemic's known origin point, Wuhan, China, can transmit pathogens to one another rapidly: transport workers move goods rapidly along surface and air routes, and the international managerial classes fly between centres to organize work, finance operations, and product sales.<sup>78</sup> Rapid construction in rural areas accelerates contagion spill-overs in to the human population.<sup>79</sup>

Covid-19 has exposed social policy weaknesses in the Global North and Global South. Too often, these congregate, monitor, and police vulnerable people as much as they cure or protect them. Decades of structural adjustment programs and austerity have diminished public services, introduced cost-cutting logics in private care, all while rapid urbanization and migration disrupt family and community care. Privatization and austerity in wealthier countries have led their health and eldercare systems to rely more on precarious migrant labour from the Global South. These workers do demanding and essential work, surprisingly often under unsanitary pressures: inadequate time, physical distancing, or protective equipment. In such crowded institutions, outbreaks awaiting only happenstance to connect with global disease vectors. Staff in these straitened institutions face these risks, too.<sup>80</sup>

Indeed, not only hospitals and prisons but arguably cruise and cargo ships, workers' dormitories, and even homeless shelters bear analogous risks. Fear that cargo crews will succumb has led to their confinement or re-enlistment, well beyond normal rotation periods, to protect international supply lines.<sup>81</sup>

The urban working poor, we might say, also experience dormitories increasingly as "disciplinary" institutions: many cluster them and restrict their movements, and telling exposés suggest unsanitary crowding and exposure are more common than many people wished to admit. Such residents face disproportionate risks from the Covid-19 lockdown and political risks from strict containment efforts. By further analogy, vast, densely populated, poor neighbourhoods of rapidly industrializing societies,<sup>82</sup> frontier "man-

<sup>78</sup> Rodrigue et al., "Transportation and Pandemics."

<sup>79</sup> Volpato et al., "Baby Pangolins"; Joanne P. Webster et al., "One Health – An Ecological and Evolutionary Framework for Tackling Neglected Zoonotic Diseases," *Evolutionary Applications* 9 (2016): 313–33; Christina L. Faust et al., "Pathogen Spillover during Land Conversion," *Ecology Letters* (2018); for a non-specialist overview of "spillover" disease, see David Quammen, *Spillover: Animal Infections and the Next Pandemic* (New York: W.W. Norton, 2013).

<sup>80</sup> Yeates, "Global care chains."

<sup>81</sup> David Burke, "COVID-19 creates new hardships for some cargo crews stuck aboard ships," *CBC News*, 8 April 2020, <https://www.cbc.ca/news/canada/nova-scotia/cargo-crews-shipping-covid-19-seafarers-union-1.5523199>.

<sup>82</sup> Mike Davis, *Planet of Slums* (London: Verso, 2006).

camps,”<sup>83</sup> and refugee camps<sup>84</sup> all deserve policy-makers’ attention.

Globalization is no abstract, universal state: it flows along specific corridors; it converges on specific hubs of productive or care work; it fans out again. Its competitive pressures have encouraged clustering under unhealthy conditions in a wide range of social institutions. Production and distribution networks and accelerated international mobility have facilitated global disease transmission. Locking the latter down has proven so damaging as to be unsustainable for long periods.<sup>85</sup>

The story of Covid-19 transmission entails interconnections built by the very economic order that Covid-19 has upended. Southeast Asian workers bear witness to this at multiple sites. Emergency medicine provides a lesson in the high responsibilities of nation-states, whatever their circumstances, and in thinking globally and concretely to optimize responses.

<sup>83</sup> “12 confirmed cases of COVID-19 linked to Kearn Lake oilsands facility,” *CBC News*, 16 April 2020, <https://www.cbc.ca/news/canada/edmonton/12-confirmed-cases-of-covid-19-linked-to-kearl-lake-oilsands-facility-1.5535333>.

<sup>84</sup> Rebecca Ratcliffe and Redwan Ahmed, “Fears Rohingya refugees face disaster after Covid-19 reaches Cox Bazar,” *The Guardian*, 15 May 2020, <https://www.theguardian.com/world/2020/may/15/fears-rohingya-refugees-face-disaster-after-covid-19-reaches-coxs-bazar>.

<sup>85</sup> Lawson and Xu, “Emergency Health Policy and SARS.”

# Index

*For the benefit of digital users, indexed terms that span two pages (e.g., 52–53) may, on occasion, appear on only one of those pages.*

Note: The terms, *coronavirus*, *Covid-19*, and *SARS-CoV-2* appear on multiple pages throughout the volume and are therefore not included in the Index

- air travel, 309, 379, 400–1, 412
  - reductions, 59–60, 88–89
  - restrictions, 162–63, 164, 168, 339
  - suspensions, 59, 257, 412–13, 414
- apps, 218–19, 247–48
  - for contact tracing, 209–10, 212–13, 228, 420 (*see also* contact tracing)
  - for government communication, 228, 235
  - for quarantine enforcement, 212, 420
  - for risk estimation, 32–33, 183, 211, 247–48
  - for self-diagnosis, 210–11, 245
  - See also* social media; technology
- authoritarianism, 34, 42, 171–72
  - containment of Covid-19 through, 8, 14–15, 33–34, 46, 55–56, 133
  - as exacerbating condition, 20–21
  - historical, 346
  - rise of, 18–19, 166, 249, 327–28, 349, 416
  - See also* democracy
- bailouts. *See* financial aid
- Bangladesh, People's Republic of, 366
- banks, 303, 372–73, 421, 431–32, 441
- central, 97, 303, 371–72, 425–26
- Bhutan, Kingdom of, 20–21, 143, 279
- borders, 85, 259, 412, 450–51
  - increased controls at, 47, 290–91, 338, 415–16
  - insufficient, 253–54, 289
  - limiting travel across, 9, 59–60, 66–67, 225, 281
  - quarantine at, 59–60, 66–67
  - screening at, 14–15, 199–200, 225, 253, 280, 415
  - See also* quarantine; travel restriction
- Buddhism, 20–21, 265, 284, 285–86, 345–46, 350–51. *See also* religion
- Cambodia, Kingdom of, 20–21, 137, 271–72, 293, 453–54
- carriers, asymptomatic, 10–11, 12–13, 83, 446
- editorship, 8–9, 73, 74–78, 179, 345–46, 451. *See also* information: dissemination of
- China, People's Republic of, 17, 27, 74–78, 251, 451
  - as carbon emitter, 426–27, 432, 436 (*see also* climate)
  - containment efforts in, 8, 209–10, 269
  - control of information by, 79–80, 191–92, 193–96
  - as development partner, 296, 421–23
  - economy of, 366–67, 372–76, 396–97, 404–5, 452–53
  - restrictions on travel from, 9, 47–48, 59, 181, 225, 340
- as source of Covid-19, 7–8, 338–39
- trade with, 16–17, 20–22, 43, 79–80, 397–99, 400–1, 406, 407, 411 (*see also* trade, international: US-China)
- Christianity, 267–69, 318–19, 338–39. *See also* religion
- climate, 7, 22, 390–91, 393, 425
- colonialism
  - history of, 118–20, 123–24, 128, 129
  - policies influenced by, 18, 117–18, 129

- community spread. *See* transmission of Covid-19: domestic
- confinement measures. *See* quarantine
- contact tracing, 242–44, 295–96, 421, 452  
by hand, 226–27  
high-tech, 32, 68, 207–8, 209–10  
insufficient, 19–20, 349  
pre-emptive, 14–15, 47, 222, 279  
privacy concerns surrounding, 49, 212–13 (*see also* privacy)  
reactive, 198–99, 223–24, 323–24, 415–16
- cure for Covid-19. *See* treatment for Covid-19
- curfew. *See* lockdowns
- data, personal. *See* privacy
- delivery companies, 38–39
- democracy, 43, 239, 349  
elections in, 224, 307, 314, 329, 336, 344, 416  
information flow in, 73, 80–81, 134 (*see also* transparency, governmental)  
models of, 186–87, 282  
power crisis in, 138–39, 167  
successes of, 143, 286, 451  
*See also* authoritarianism
- deportation, 245. *See also* repatriation
- discipline. *See* enforcement
- doctors. *See* labour: healthcare
- East Timor. *See* Timor-Leste
- elections. *See* democracy
- emergency powers, 18–19, 28–30, 133, 152, 167–69, 297, 328–29  
lack of, 156–57, 159–60  
limits on, 163–64, 180, 310  
new, 304–5  
uninvoked, 91–92, 173–74, 225, 291–92
- employment. *See* labour
- enforcement, 65–66, 326, 344–46  
bodily, 183–85  
community, 30–34, 163, 235, 342, 346  
through imprisonment, 30, 65–66, 245, 255–57, 289–90, 304–5, 325, 345–46, 356  
lack of, 143, 152–53  
monetary, 64–66, 229, 245, 255–56, 325  
technological, 17, 52–53, 126, 129, 290–91, 420 (*see also* surveillance)  
*See also* enforcement; technology
- ethnicity, 18–19, 128–29, 145–46, 157, 185–86, 274, 335–36, 346, 350
- eviction bans. *See* housing
- exports. *See* trade, international
- face masks. *See* personal protective equipment
- fake news. *See* misinformation
- financial aid, 97, 367  
broad, 50, 70, 230, 289, 368, 371–73, 416  
to businesses, 70, 310–11  
to government, 272–73  
to individuals, 151, 156, 170–71, 329, 420  
to industries, 29, 298–300, 303, 326–28, 379, 380–82, 381*t*, 386, 425–26  
lack of, 366–67
- fines. *See* enforcement: monetary
- food security, 35–40, 43, 183–84, 270, 271–72, 276, 291, 405, 427–28
- free speech. *See* censorship
- gatherings, public  
bans on, 48, 60, 121, 175–77, 181–82, 257, 267, 271, 310, 326, 341, 347, 411, 415, 418  
causing infection, 241–42, 267–68, 318–19, 323, 338–39  
defence of, 248–49, 319–20  
for protest, 82, 138–39  
reduction measures, 315, 319, 340–41  
*See also* lockdowns
- gender. *See* inequality: gender
- global warming. *See* climate
- H1N1, 6, 13
- healthcare, 48, 66, 191, 247, 286, 288–89, 293–148, 337  
databases, 49, 51–52  
capacity, 12–13, 14–15, 153–54, 167, 231, 305, 313, 330, 336, 413  
unequal access to, 4–5, 249–50, 336, 337  
workers (*see* labour: healthcare)
- Hinduism, 268–69. *See also* religion

- hoarding, 67, 70, 169, 171, 235, 254–55, 279–80, 346
- homelessness, 156, 171
- Hong Kong (SAR), 16–17, 19–20, 81–83, 94, 105–6, 138–39, 143–44, 212, 251, 368, 373, 381*t*, 386
- housing, 413
  - causing infection, 143–44, 223–24, 231, 324–25
  - improvements, 237, 286–87
  - increasing risk, 270, 343, 447
  - subsidies, 284–85
- imports. *See* trade, international
- India, Republic of, 93, 173
  - abuses of power in, 139–41
  - as carbon emitter, 426–27
  - containment efforts in, 18–19, 92, 135
  - discrimination in, 139–40, 268–69
  - relief efforts in, 144
  - trade with, 286–87, 291
- Indonesia, Republic of, 20, 93–94, 267, 269, 275, 307, 426–27
- inequality, 236–37, 326
  - as exacerbated by Covid-19, 250
  - fiscal, 4–5, 128–29, 140–41, 155–56, 171, 183–85, 230, 293–95, 302, 335–36, 346, 347, 358–59, 413, 420–21
  - future of, 22
  - gender, 300, 332, 359
  - neglect of, 222, 249–50
  - as risk factor, 302
  - technological, 127
- information, 73
  - dissemination of, 19, 29, 207–8
  - personal (*see* privacy)
  - repression of, 8–9, 191–92, 201–2, 203–4 (*see also* censorship)
- Islam
  - discrimination against, 139–40, 274, 357–58
  - practice of, 175, 267–69, 275, 316–17, 318–20
  - proselytism of, 323–25
  - See also* religion
- Japan, 147
  - as carbon emitter, 426–27, 429–31, 432, 442
  - containment efforts in, 18–19
  - culture of, 15, 143, 268–69
  - as development partner, 296, 421–22
  - economy of, 104–5, 109–10, 399
  - insufficient response of, 91–92, 134–35
  - trade with, 397–98, 400–1, 407, 409, 436, 450
  - travel to and from, 90–91, 94
- jobs. *See* employment
- Korea, Republic of, 12–13, 239
  - as carbon emitter, 426–27, 432, 441
  - culture of, 213–14, 267–69
  - as development partner, 421–22
  - economy of, 366–67, 381*t*, 406
  - pandemic response of, 19–20, 87–88, 154–55, 198–99, 210–11
  - travel to and from, 59, 90–91
- labour, 35–36, 170–71, 301–2, 341, 366–67, 368, 373–75, 388
  - activism, 83, 143–44, 170–71, 251, 303
  - healthcare, 46, 49, 85, 157–58, 210, 226, 251, 296, 346
  - industrial sector, 36–37, 301–2, 453, 455
  - migrant, 4–5, 19–21, 22, 36–37, 50, 55, 126, 127, 128, 129, 140–41, 145–46, 173–74, 183–85, 199–200, 221, 222, 223–24, 229–30, 237, 300–1, 324–25, 329–31, 336–37, 338–39, 340, 396, 447, 455–58 (*see also* refugees)
  - service sector, 35–37, 453, 455
- law, constitutional, 61–63, 169–70, 350–51, 354–55, 356–57, 359–62
  - court decisions on, 45, 311
  - debates over, 168–69, 289–90, 349, 351–52, 354
  - impotence of, 139–40
  - responses enabled by, 134–35, 173–74, 292
  - responses limited by, 94, 138, 165
  - responsibilities created by, 179–80, 287–88, 297
  - rights granted by, 260, 261–62 (*see also* rights)
- location tracking. *See* technology: location tracking

- lockdowns, 91–92, 321, 325–26, 411  
 countrywide, 18–19, 121, 173–74, 182, 239, 352  
 extensions of, 175–79, 223–24  
 local, 59–60, 64, 197–98, 253, 341–42  
 partial, 14–15, 164, 223–24, 228–29, 281–82, 297–98, 325–26, 341  
 power to impose, 137, 161–62, 355  
 progressive, 8, 9, 174–75  
 unequal effects of, 128–29, 140–41, 183–84, 267, 367  
 voluntary, 18–19  
*See also* re-opening
- Macau (SAR), 95
- Malaysia, 138, 267–69, 321  
 economy of, 372, 389  
 pandemic response of, 20–21, 91–92  
 travel to and from, 94, 95, 223, 336–37, 458
- masks. *See* personal protective equipment
- mass gatherings. *See* gatherings, public
- media, 276  
 alarmism, 235  
 scrutiny of government, 7–8, 80, 236, 292, 301–2, 329  
 supporting government, 54, 125, 279–80, 355, 357–58  
*See also* misinformation
- medical workers. *See* labour: healthcare
- medicine. *See* healthcare
- MERS, 3, 5, 12–13, 14–15, 20–21, 63–64, 96, 135–36, 143, 145–46, 239–40, 242, 243, 245, 246, 450–51, 452
- Middle East Respiratory Syndrome.  
*See* MERS
- misinformation, 17, 19, 54, 64, 65–66, 164, 179, 235–36, 297–98, 301–2, 346  
 alleged, 76  
*See also* media: alarmism
- monarchy, 143, 279
- Mongolia, 21–22, 411
- movement control orders. *See* lockdowns
- Myanmar, Republic of the Union of, 20–21, 335, 455
- Nepal, Federal Democratic Republic of, 9
- news. *See* media
- Oceania, 366–67
- Pakistan, Islamic Republic of, 93–94
- panic buying. *See* hoarding
- personal protective equipment (PPE), 83, 227–28, 257, 269, 342–43  
 compulsory use of, 47, 48, 164, 229, 420  
 distribution of, 52, 149–50, 151, 199–200, 210, 247–48  
 effectiveness of, 10, 11–12, 453  
 manufacture, 49–50, 401  
 recommendations, 241–42, 414–15  
 shortages, 49–50, 254–55, 258–59, 279–80, 312–13, 421–22
- Philippines, Republic of the, 95, 137, 267, 368, 456–57
- physical distancing, 10, 11–12, 47, 48, 367, 414  
 campaigns, 241–42  
 compliance challenges, 343, 358–59, 453  
 economic effects of, 257, 391  
 enforcers, 126, 235  
 legislation of, 227  
 and politics, 139–40, 352  
 and technology, 53  
 and worship, 20, 270–71, 319
- poverty. *See* inequality: fiscal
- privacy, 207, 228, 250  
 curtailment of, 52, 136, 183, 205, 243–44, 248  
 protections, 45, 52–53, 143–44, 208–9, 212, 213, 245  
 violations, 30, 46, 49, 243–44  
 voluntary surrender of, 33–34  
*See also* surveillance
- protests. *See* gatherings, public: for protest
- quarantine, 144, 181, 301–2  
 avoiding, 64, 88–89, 124, 184–85, 290–91  
 enforcement of, 52, 207–8, 209–10, 212  
 upon entry, 47, 48, 59–60, 95, 147–48, 149, 150, 198–200, 225–26, 255–56, 322–23, 326, 338, 339, 340, 412–13  
 exceptions to, 70  
 upon exposure, 49, 68, 248–49, 279  
 facilities, 257–58

- historic, 129  
 at home, 120–21, 213, 244–45  
 legality of, 45, 46  
 mass, 30–31, 67, 347, 420  
 period, 281  
 and religion, 267, 285–86  
 resistance against, 29, 125  
*See also* borders: quarantine at
- refugees, 20–21, 145–46, 331. *See also*  
   labour: migrant
- religion, 20–21, 22–23, 145–46, 175–77,  
   185–86, 248–49, 265, 285–86,  
   308–9, 318–20  
 conflicts of, 268–69, 274  
*See also* Buddhism; Christianity;  
   Hinduism; Islam
- rental property. *See* housing
- reopening, 11–12, 57, 152, 223–24, 329–  
   30, 340–41, 411–12, 414, 452. *See also*  
   lockdowns
- repatriation, 92–94, 412–13  
   controversy over, 417, 419–20  
   difficulties with, 169–70  
   economic effects of, 20–21  
   government facilitation of, 281,  
   415–16, 418  
   from high-risk areas, 9, 147  
   restrictions on, 30, 36–37, 339  
   spread caused by, 413  
*See also* deportation
- reporters. *See* media
- rights, 92–93, 357–59  
   concerns, 53–54, 87, 143–44, 183,  
   240, 420  
   erosions, 55, 136, 157–58, 248–49  
   to free speech (*see* censorship)  
   legislation, 45  
   limits, 61, 289–90  
   protections, 46–47, 182–83, 245  
*See also* privacy
- risk factors for Covid-19, 10–11, 148, 164,  
   224, 226
- SARS (*but not* SARS-CoV-2), 3, 6–7,  
   12–13, 14–15, 19–20, 27–28, 29–30,  
   31, 37, 40–41, 44–45, 48, 53, 58,  
   63, 72, 74–76, 78, 79, 80–82, 84,  
   85–86, 88–89, 96, 117–18, 120–21,  
   122, 123, 124–26, 128–29, 135–37,  
   141–42, 146, 193, 200–1, 210, 221–  
   22, 224, 227, 251–53, 258–59, 446,  
   450–51, 452
- screening for Covid-19. *See* testing for  
   Covid-19
- Severe Acute Respiratory Syndrome.  
*See* SARS
- sexism. *See* inequality: gender
- Singapore, Republic of, 115, 199–200,  
   221, 267–68  
   economy of, 99, 105, 368–72, 373, 381,  
   381*t*, 386  
   legislative actions of, 91–92,  
   136–37, 141  
   pandemic response of, 19–20, 95, 143–  
   44, 212–13, 218–19, 457–58  
   transparency of, 142–43  
   travel to and from, 94
- social distancing. *See* physical distancing
- social media, 234–35, 276, 279–80  
   censorship of, 77–78  
   misinformation on, 65–66, 179, 346  
   propaganda, 174–75, 309, 421–22  
   spread of information through, 74–75,  
   80, 171, 331–34, 338, 347  
   transmission prevention through, 32–  
   33, 126, 209–10  
*See also* apps; technology
- South Korea. *See* Korea, Republic of
- spread of Covid-19. *See* transmission of  
   Covid-19
- Sri Lanka, Democratic Socialist Republic  
   of, 20, 138–39, 265, 349
- stimulus. *See* financial aid
- supply chains. *See* trade, international
- surveillance  
   concerns, 183, 205, 240, 249  
   high-tech, 17, 27–28, 30–34,  
   87–88, 256–57  
   legislation, 243–44  
   normalization of, 248, 250  
   for transmission prevention, 14–15,  
   181–82, 255–56  
*See also* enforcement: technological;  
   privacy; technology: location  
   tracking



- swine flu. *See* H1N1
- symptoms of Covid-19, 10–11, 74–75, 178–79, 209–10, 339
- Taiwan, 16–17, 19, 43, 78–81, 136, 141, 143–44, 210, 381*t*, 406
- technology, 19–20, 52–53, 67–69, 207, 228, 246–48
- communications, 207–8, 216–17, 229, 235, 240, 270, 273, 390–91
  - companies, 38, 246, 247, 399
  - location tracking, 32–33, 87–88, 209–11, 212, 240, 243
- See also* apps; enforcement:
- technological; healthcare: databases;
  - social media; surveillance: high-tech
- testing for Covid-19, 226–27, 349, 452
- of asymptomatic individuals, 12–13
  - at borders, 14–15, 162–63, 198–200, 279–80, 339, 412, 415
  - discriminatory, 329–30
  - equipment for, 66–67, 69, 246
  - insufficient, 150–51, 153–55, 174–75, 178–79, 295–96, 311, 336, 338, 347
  - mass, 223–24, 240, 242–43, 330
  - rollout of, 177–79, 181, 421–22
  - of symptomatic patients only, 8, 14–15, 154–55, 175
  - travel-history based, 295–96, 323–24
- Thailand, Kingdom of, 161
- economy of, 89–90, 366–67
  - law of, 139–41
  - pandemic response of, 135, 213, 218–19, 267, 269
  - politics of, 18–19
  - poverty in, 271–72
  - travel to and from, 20–21, 336–37, 338–39, 340
- Timor-Leste, 146, 428*f*
- tourism, 302–3, 422–23, 453–54, 455
- bans, 181–82
  - economic importance of, 85–86, 89–90, 289, 293, 347, 365
  - industry solidarity, 287
  - industry supports, 298–300, 309, 326–27
- tracking. *See* surveillance
- trade, international, 35, 395, 437–38, 445
- agreements, 21–22
  - importance of, 79–80, 221, 291, 411, 412, 422
  - of medical supplies, 50
  - reductions, 59
  - tariffs, 293–95
  - through supply chains, 32, 40
  - US-China, 16–17, 21–22, 35, 38, 390, 396, 398–99, 407
- transmission of Covid-19, 10–11, 76, 267–68
- domestic, 9–10, 15, 43, 47, 58, 64, 147, 149–50, 174–75, 177, 223–24, 241, 256, 257, 259–60, 281–82, 288–89, 308, 340–41
  - international, 30–31, 43, 47–48, 162–63, 240–41, 245, 280, 308, 322–23, 324–25, 336–37, 339, 411, 413
- transparency, governmental, 15–16, 47, 54–56, 310, 313, 315, 329, 356–57, 405–6. *See also* democracy: information flow in; information
- travel restriction, 88–92, 225
- against egress, 326
  - against ingress, 411
  - arguments against, 195–96
  - arguments for, 253–54
  - economic consequences of, 21–22, 383, 422
  - gradual, 181–82, 197–98
  - on healthcare workers, 46, 49
  - from high-risk areas, 47–48, 79–80, 281, 297–98, 317, 322, 343
  - individualized, 209–10
  - inhumane, 183–84
  - legislation, 164, 418
  - as middle-ground approach, 14–15
  - power to impose, 137
  - total, 121, 414
  - voluntary, 245
- See also* borders
- treatment for Covid-19, 6, 8, 9–10, 309
- traditional, 269, 273–74, 285–86, 309
- unemployment. *See* labour
- United Nations, 89, 197
- United States of America
- culture of, 142
  - as development partner, 296

- diplomatic relations of, 41–42, 191–92, 404–5, 409  
 economy of, 98–99, 102–6, 365–66, 381, 397–98, 403*t*  
 pandemic response of, 158  
*See also* trade, international: US-China
- vaccines, 6, 7–8, 9–10, 204, 367, 414, 452  
 ventilators, 10–11, 12–13, 69, 70, 154, 402.  
*See also* healthcare: capacity  
 videoconferencing. *See* technology: communications  
 Vietnam, Socialist Republic of, 57, 197–98, 398–99, 454–55  
 vigilantism. *See* enforcement: community  
 voluntary measures, 33–34, 53, 82, 123, 212–13, 227, 245, 258–59, 284–85, 300
- workers. *See* labour  
 World Health Organization (WHO), 191  
 communications from, 8, 9, 293–95  
 communications to, 7–8, 44  
 conservative assessment by, 79–80, 81  
 function of, 19  
 recommendations, 90–91, 141, 281, 337, 343, 414  
 interventions by, 296, 311, 411, 412, 421  
 World Trade Organization (WTO), 404–5, 406–7, 408, 409
- Xi Jinping, 29, 31, 37, 41, 421–22
- Zoom. *See* technology: communications















