



Four Legs to Stand on: Taiwan's Fight against COVID 19

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In a time of unprecedented global pandemic, Taiwan has demonstrated to the world its strength and success in combating the spread of COVID-19. Statistics show that since the first confirmed case on 21 January 2020, there have been only 486 confirmed cases with 7 deaths. Of those confirmed cases, around 80 percent (394/486) were imported cases of returning Taiwanese nationals and inbound foreign visitors.¹ The numbers exhibit not only the achievement of controlling the pandemic as a whole, but reflect that there was no large-scale community spread. It is intriguing to wonder how a democracy so close to China, in geometric or business terms, and yet so remote from the World Health Organisation (WHO), could control the virus outbreak so well in this global crisis in comparison to other parts of the world?

Success has not come without a price. Taiwan learned hard lessons from the past tragic experience of SARS (Severe Acute Respiratory Syndrome) in 2003. This built a strong base for responding to a pandemic promptly, including the outbreak of COVID-19 this time. One could also argue that strong institutional capacity-building has also contributed to the "Taiwan miracle."

In this essay, I would argue that Taiwan has made the most of her democracy, technology, law and community in fighting against the COVID-19 pandemic that has swept the globe in an unprecedented way. It is the combination of these four forces that has made Taiwan's fight against global pandemic as successful as we have observed so far.

What were the main mechanisms used to handle the COVID 19 challenges, both health and economic, in your country? How well did they work for the purpose?

About two months before the World Health Organization became aware of the crisis in late 2019, Taiwan was already alert to the possible impact of COVID-19.² After discovering suspicious cases in China in the end of 2019, Taiwan started to implement different levels of measures, adjusted to the severity of the pandemic. Beginning 26 January 2020, inbound travellers from the Hubei province of China were banned from entering into Taiwan. From 6 February, all inbound travellers from China were banned. With the sharp increase of confirmed cases worldwide, since 19 March 2020, all inbound foreign travellers were banned from entering Taiwan, including as transit passengers. The Government imposed travel restrictions on foreigners as well as Taiwanese nationals. To reduce the risks of community spread, the Government also issued an overseas travel ban on all teachers and

¹ According to the press conference in Aug. 19.2020 of Ministry of Health and Welfare.

<https://www.facebook.com/mohw.gov.tw/videos/300026947729814/>

² As early as 15 January 2020, Taiwan officially announced Covid-19 as the Category 5 Communicable Disease under the CDC Act

students at the high-school level and below. Also, to prevent any possible medical human resources shortage, the travel ban was also applied to all doctors and medical care providers.

For Taiwanese nationals coming back to Taiwan, 14-day compulsory quarantine was required. Those having contacts with COVID-19 patients were required to self-isolate at home or in designated places. Individuals under quarantine or isolation orders were required to regularly report their health status to the supervisory office. To ensure the quarantine and isolation served its purpose, Taiwan developed a so-called “electronic fence” system to monitor compliance with isolation and quarantine orders in mid-March 2020. A list of telephone numbers of those undergoing isolation or quarantine was sent to telecom companies. Through mobile electromagnetic radiation, operators could trace the movement of a de-identified mobile phone signal that contained no identifiable personal information. If isolated or quarantined individuals left their designated shelter locations or turned off their mobile devices, the system would notify the police, civil and health authorities. Only the first responders would receive information about the violator’s name, phone number and address, which was required to take further enforcement action. In this way, the “electronic fence” was designed to ensure compliance with quarantine/isolation orders without overly compromising individual privacy.

Noticing the importance of wearing masks and social distancing, beginning 1 April, all passengers were required to wear a face mask when using public transportation and entering most indoor venues. To guarantee the sufficient supply of masks and ease the tension of panic-buying, in late January the Government issued a ban on all exports of medical masks and further ordered the massive production of masks through collaboration with a few key mask manufacturers along with the requisition of all medical masks produced in domestic factories. Beginning 6 February, a real-name distribution system of face masks has been in place (which connected mask distribution with a person’s National Health Insurance card, as described below) to ensure an adequate and sustainable supply for everyone at a fairly low price.

All the measures mentioned above could be effectively adopted thanks to Taiwan’s E-governance system, which facilitated the swift integration of information. It was a bold step undertaken in early February to amalgamate two databases: integrating the immigration database that has the information of inbound and outbound travellers with the National Health Insurance (NHI) database (the MediCloud system)³. Critical information and data was stored on the NHI card, which every Taiwanese citizen has. People could use their NHI card to collect their masks under the real-name distribution system and later on, they could use the NHI card to collect the Triple Stimulus Vouchers issued by Ministry of Economic Affairs. The integrated information system has also been vital in successfully tracing confirmed patients or patients with suspect symptoms, using their travel histories and their contact information. After the implementation of these measures, by 25 May, Taiwan has seen more than 40 days without any local coronavirus case; since then, the restrictive measures in place were gradually lessened.

In addition to these health-focused responses, the Government has also invested heavily in economic responses, partially to boost the economy as a whole and partially to provide compensation to those who were negatively affected by pandemic-related policies. The *Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens* (Special COVID-19 Act) was enacted precisely for this purpose. Article 19 of the Act provides a broad mandate for the Government

³ The NHI system covers 99.7% of the population in Taiwan, including indigenous peoples, low-income families, persons with disabilities and even eligible foreigners, for providing high-quality medical services at very affordable expenses. In 2013, it installed the MediCloud system.

to provide subsidies, compensation and revitalization funds for industries in dire need. A budget of 60 billion new Taiwan dollars (NTD) was provided for government expenditures on relief, compensation and economic stimulus. Using the delegations provided in the Special COVID-19 Act, the Ministry of Economic Affairs launched the Triple Stimulus Vouchers. If a person was part of the NHI system and had an NHI card, he or she was eligible to purchase 1000 NTD of vouchers which were worth 3000 NTD. These vouchers could then be used to purchase goods and services. Through this means, the Government was hoping to increase consumption and stimulate the market, which was devastated due to the COVID-19 pandemic.

As mentioned previously, in order to curb the spread of COVID-19, some compulsory and/or restrictive measures were imposed by the Government, such as the travel ban, quarantine and isolation, information gathering on personal travel histories, and the requisition of medical masks from some domestic manufacturers. Simultaneously, it has been crucial for the Government to strike a balance between the need for pandemic control, compliance with the rule of law and the protection of civil liberties. Consequently, the *Regulations Governing Compensation for Periods of Isolation and Quarantine for COVID-19* were promulgated on 10 March 2020, under which all individuals who faced isolation, quarantine or travel bans and/or factories or businesses who were negatively affected by restrictions could apply for compensation. The effectiveness and consequences from these economic-related measures are still unclear. Through the whole process of launching them, civil society groups have raised questions and concerns regarding the necessity and efficiency of these measures. The next step will be to undertake a more systematic assessment of these measures, in the aftermath of the COVID-19 response.

What role did courts play in responding to the emergency? Were courts inhibited/precluded from review by the facts of the emergency?

Undoubtedly, while the results from Taiwan are extremely positive considering the country's proximity to the original outbreak, nevertheless, not all of the Government's approaches have been flawless. Some of them still remain controversial and have been highly concerning for the public.

The primary legal mechanism through which regulatory measures can be undertaken for combating epidemics such as COVID-19 is the *Communicable Disease Control Act 1944* (CDC Act). Substantially amended in 2003 after the SARS outbreak, the CDC Act was criticized by the domestic and international community for being too broad and vague and without a viable compensation mechanism. Moreover, the amended Act allowed for approaches such as compulsory quarantine or lockdown of specific hospitals, which was also criticised as too much of an intrusion on personal freedoms. To address the issue, Constitutional Court of Judicial Yuan made *Interpretation No 690* in 2011. According to the Court, compulsory physical examinations, short-term detentions or quarantines and other similar dispositions did not violate the principle of legal clarity, the principle of proportionality, or the right to due process of law guaranteed in Art. 8 and Art. 23 of the Constitution. However, the Court warned the Government that notwithstanding the necessity of preventing and combating serious communicable diseases, the CDC Act must set a time limit for compulsory quarantine and provide further detailed regulations. The Court also indicated that prompt remedies and an adequate compensation regime should be established for quarantined persons.

Following the constitutional ruling in 2011, the CDC Act underwent a major revision and has since been amended quite a few times, most recently in 2019. According to the CDC Act now, three key provisions are provided for balancing protection of human rights and individual freedoms: Article 10,

guarantees the right to all relevant medical information of non-closure; Article 11 provides for the protection of dignity and legal rights of the patients and other parties in close connection and the prohibition of any kinds of discrimination against them respectively; and Article 53 authorizes compensation for isolated or quarantined individuals.

Recognizing the need of a special law to deal with this unprecedented public health crisis notwithstanding the existing CDC, the Executive Yuan (the executive branch of the government) sent a legislative bill to the Legislature for deliberation in 20 February. The Legislature deliberated and finally passed the Special COVID-19 Act on 25 February, showing exceptional efficiency and solidarity. The CPVOD-19 Act provides for even more generous relief and compensations, as a supplement to the CDC Act, aside from needed delegation of regulatory measures. A limited period has been set for the Special COVID-19 Act: it will operate from 15 January 2020 to 30 June 2021 and any further extension must be granted by legislative resolution.

Despite the fact that the Special COVID-19 Act tried to fix some flaws that existed in the old CDC Act, two provisions of the Special COVID-19 Act still caused serious concerns. First, Article 7 grants the Central Epidemic Command Center (commonly referred to now as 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, limited only by the requirement of “necessity”. Such blanket authorization has led to strong criticism against Taiwan’s COVID-19 legal responses as mirroring dictatorial or authoritarian regimes. That said, as a supplement to the CDC Act, this provision must be interpreted and applied in accordance with the CDC Act. Only with this strict and narrow understanding can this provision be saved. 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.

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 an 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 obligated not to disclose, let alone release, such data. The Government justified this provision on the basis of its narrower application to those violations of quarantine or isolation orders. Still, facing mounting pressures from human rights groups and the legal community, a clause was eventually added to the Act during legislative deliberation to obligate the government to remove these personal data upon the completion of the pandemic in accordance with the *Personal Data Protection Act*.

To further ease concerns with rule of law or human rights encroachment, Article 18 of the Special COVID-19 Act obligates the government to issue a written report to the Legislature three months after promulgation. The Premier must also report to the Legislature about the pandemic situation and the special budget execution after six months. A dedicated government website was also required to be set up to provide updated information on relevant laws, regulations and orders produced by the Central Command and other competent agencies. visitors.⁴

Similar to the situation during SARS, a complaint regarding compulsory quarantine was made to Taipei’s local court in August. The application of habeas corpus was filed due to discontent with the 14-day quarantine and the requirement to stay in a designated hotel. The claim was rejected by the

⁴ Website in Chinese, <https://www.ey.gov.tw/Page/5A8A0CB5B41DA11E/ad3f40f1-9a79-47f6-8a2b-0883ba2c0b05>; Website in English <https://english.ey.gov.tw/>

court. The decision stated that the personal freedom of the applicant was not exploited or restrained. Once again, the legitimacy of compulsory quarantine was justified by the court under the delegations provided by the CDC Act.

What role did experts play and within what organizational/structural framework?

During the COVID-10 pandemic, the main tasks and accountability within the governmental framework for action has undergone some changes. For COVID-19, the person who serves as commander-in-chief and has come under the spotlight of the media and the entire nation is the Minister who heads the Ministry of Health and Welfare, instead of the Premier.

According to Constitution, the President of Executive Yuan should be the commander-in-chief for combating the COVID-19 pandemic. However, the Central Epidemic Command Center (Central Command), which was established by the Center for Disease Control (CDC), is the primary institution that has been responsible for issuing executive measures concerning COVID-19 and related policies and programs. The Central Command primarily consists of medical professionals from the Ministry of Health and Welfare; most of them are qualified as practicing doctors in Taiwan.

These experts are keenly aware of the importance of public trust and democratic accountability in a time of the pandemic. From the day it was established, the Central Command began holding daily live-broadcast press conferences to provide updates on COVID-19 related information and government policies to dispel fake news and misinformation. This has contributed a lot to the success of controlling the pandemic, but also somehow changed the presumed allocation of roles within the governmental framework. Many other departments or divisions within the Executive Yuan are comprised of officials who have all kinds of backgrounds, but not necessarily a public health or medical one. It was believed that people may find it more convincing to have health experts or medical professionals responsible for dealing with specific health-related COVID-19 matters, such as quarantine or vaccine development.

This COVID-19 outbreak could be a turning point for the role of government. The Government functions in a transparent and democratic way while the expertise are still fully respected. Accountability frameworks and the distribution of business would be more task-oriented, making the most suitable experts involved in the decision-making of critical incidents.

What role did international institutions and, in particular, the WHO, play in responding to the emergency in your country?

As part of international community, Taiwan has demonstrated a strong intention to contribute to this tough fight. However, due to the political issue between Taiwan and China, Taiwan has never officially been part of WHO. Despite this isolation, Taiwan still shows a passion and capability to contribute. Soon after discovering the suspicious cases in China on 31 December 2019, the CDC instantly wrote a warning email to WHO and made an inquiry to the Chinese Government about the contagious atypical pneumonia that had appeared in Wuhan and the isolation treatment they adopted. Having heard no responses from both, the CDC then decided to take advanced actions as a precaution. All of these precautionary measures were done more than two months earlier than when WHO officially announced COVID-19 as a global pandemic. To contribute, Taiwan launched the #TaiwanCanHelp program devoted to help internationally, which includes donating masks voluntarily to those countries in need, both officially and through the private sector.

Having no opportunity to be officially informed or advised by the WHO, Taiwan still paved a way for dealing with migrant workers in relation to COVID-19. Recognising that illegal migrants needed a safe way to be tested and to engage with the public health system, the Government allowed illegal migrant workers to contact immigration offices thereby reducing the risks of coronavirus infections going underground. The National Immigration Agency also implemented a temporary measure to loosen its enforcement and lessen punishment in the period effective from 20 March throughout 30 June. In the hope of closing the loopholes of disease prevention created by undocumented migrant workers, more supplementary measures are taken by the CDC including providing needed information in the TV, radio and internet.

What positive or negative lessons can be taken from this experience in your country in relation to democratic representation and the response to emergencies?

Undoubtedly, the success of combating COVID-19 allows Taiwan to be recognized by the international community as a case study to be learned from. The transparent legal framework designed and implemented quickly as the pandemic spread, and the responsive process implemented by the Government for dealing with travellers and the potential for rising infections contributed to the miraculous success of Taiwan.

Democracy matters, but it was operated in a way to allow public health experts who are trusted to do their jobs to take action without too much political interference from the top. A strong sense of trust in combination with a developed community solidarity, particularly in wearing and allocating face masks, has made the regulatory measures work to the level of public satisfaction. Infection control laws that have been amended and improved over time have served as a strong foundation for government operations. It was also a lesson learned that what was necessary is not always well specified laws, but a flexible legal framework under which democratic processes and information technology can function to respond promptly and ensure accountability.

Taiwan has demonstrated its capacity in swiftly dealing with a public health crisis within a transparent, democratic and legal framework. Though the framework is not without flaw, it continues to work with a vibrant civil society to negotiate possible best solutions in time of public health urgency.

Biography: Professor Jiunn-rong Yeh is National Taiwan University Chair Professor. He holds JSD degree from Yale Law School and has researched and taught intensively on the process of constitutional change, globalization and regulatory theories, and environmental sustainability with rich contextual underpinnings. Professor Yeh held many ministerial positions in the government. He was Ministers of Education and the Interior in the cabinet of Taiwan. He was a primary designer or drafter of several fundamental legislative bills and involved heavily in constitutional revisions in the context of Taiwan's government reform and democratic transition. He received Award of Excellence in Research from National Science Council and was appointed as a university chair professor. Professor Yeh's recent publications include *The Constitution of Taiwan: A Contextual Analysis* (Hart Publishing, 2016). *Asian Courts in Context* (Cambridge University Press, 2015)

