

# Moving Beyond COVID-19 Restrictions in East Asia: Pushing Back Against Authoritarian Pandemic Governance

This policy brief reviews the use of emergency decrees, temporary COVID-19 laws and existing health ordinances in East Asia during the COVID-19 pandemic. Deemed necessary to combat the pandemic, these laws allowed governments to limit certain fundamental rights to their citizens. The brief examines the impacts of these laws concerning freedom of assembly, electoral integrity, freedom of expression, and the right to privacy. This brief also provides a set of recommendations focusing on the prevention of the abuse of the legislation in emergency situations.

It shows that there are two approaches to keeping the virus at bay in the region. On the one hand, China, Hong Kong and North Korea employed restrictive measures under their Zero-COVID approach. On the other hand, Japan, South Korea and Taiwan sought to implement anti-COVID measures while trying to minimise the impact that such measures would have on rights and freedoms.

The examination of the authoritarian pandemic in East Asia is part of a wider study on the misuse of emergency powers and their impact on civic freedoms and democracy across Southeast Asia, East Asia and South Asia.

## The COVID-19 Pandemic in East Asia

The virus outbreak originated in Wuhan, China. The Chinese government first concealed the information about the virus and downplayed the severity of the outbreak ([Fulco, 2022](#)). Nevertheless, China responded to the outbreak with quick and harsh measures. Within weeks, the government isolated Wuhan, hoping to contain the outbreak. The same zero-COVID policy was later extended to different parts of the country. Hong Kong first limited travelling from the mainland while allowing public activities to continue. But as the city registered more cases, the government imposed new lockdowns and banned public gatherings ([Cheng et al., 2022](#)). It was as late as December 2022, that, after nationwide protests, the government reconsidered the lockdowns that were in place ([Davidson, 2022](#)). Meanwhile, North Korea declared the first COVID-19 case in May 2022 ([Bae & Regan, 2022](#)) and imposed a nationwide lockdown ([Lee & Cha, 2022](#)). However, reports suggested that the country registered the first COVID-19 cases in January 2020 ([Jang, 2020](#)) and that a city-wide lockdown had already been enforced since then ([Cha & Smith, 2020](#)).

Democratic countries such as Taiwan, South Korea and Japan did not follow the model implemented in Wuhan. Instead, they enforced semi-lockdowns in areas where high cases were reported and increased COVID-19 testing capacity ([Davidson et al., 2020](#); [Swift, 2021](#)). As the pandemic wore on, these countries became more resilient in handling the outbreak, gradually lessening the lockdown and other restrictive measures. This was, in part, necessary to prevent damaging people's civic freedoms ([Chang & Chun, 2021](#)). In this policy brief, measures from the two main approaches are evaluated.

## Legal Measures

A number of emergency and temporary laws were invoked or enacted to address threats arising from the COVID-19 pandemic. Such laws include the formal and informal declarations of SoEs, temporary COVID-19 laws, and provisions under health ordinances providing special powers to address emergencies.

### *States of Emergency (SoEs)*

States of Emergency in various forms were declared in the region, though only **Japan** and **Hong Kong** formally declared an SoE. **Japan** declared the pandemic a national emergency with the Novel Influenza Act (NIA) (2012) on 16 April 2020, a week after a limited SoE was declared in high-risk prefectures. The Japanese government exercised this power several times in high-risk prefectures to subdue different waves of infections. Several nationwide SoEs were also declared. The government also allowed prefectures to declare medical states of emergency within its borders (Otake, 2022; NHK, 2022).

**Hong Kong** declared a state of public health emergency on 8 February 2020 by invoking Section 8 of the Prevention and Control of Disease Ordinance (2008). It then issued regulations on the disclosure of information (2020) and on compulsory quarantine schemes for arrivals to its territory (2020).

The **North Korean** leader, Kim Jong-un, declared a 'major national emergency', citing the country's first COVID-19 infection on 12 May 2022. The legal basis for the declaration and the associated emergency measures remains unclear (Bae & Regan, 2022). The North Korean government lifted mask mandates and social distancing measures in August 2022 (Salmón, 2022).

In **China**, emergency powers were exercised. Anti-COVID-19 measures are buttressed by the Public Security Administrative Punishments Law (PSAPL) (2005), from which an individual can be detained for 5–10 days should they refuse to comply with emergency orders or obstruct the functions of state organs (Section 50). PSAPL is only legally effective after an SoE has been declared. However, that was vaguely interpreted as applicable in 'emergency situations'. Therefore, the PSAPL use points to an undeclared SoE in China (NPC Observer, 2022). Finally, Taiwan and South Korea did not invoke emergency laws.

### *Temporary COVID-19 Laws*

In East Asia, temporary COVID-19 laws were drafted and used to grant temporary powers to the executive branches of several countries. The **Taiwanese** parliament promulgated the COVID-19 Special Act (2021), which empowered state authorities to manage the health crisis. Accordingly, the Central Epidemic Command Center was able to "instruct personnel to record videos or photographs of the individual's violation" and publish their personal data (Art. 8). The Act also criminalised the dissemination of 'fake news' (Art. 14) and violation of isolation measures (Art. 15, 16). The law was terminated on 30 June 2022, one year after its initial deadline.

**Japan's** Novel Influenza Act (2012) was amended in March 2020 to temporarily cover COVID-19, despite the fact that the provisions in the act did not apply to the virus. Therefore, the status of the act temporarily changed to 'COVID-19 law'. In **China**, local governments were empowered to issue local legislations to address COVID-19 the temporary management of local governance structures during the emergency and the dissemination of truthful information (National People's Congress of China, 2020). While these provisions did not establish punishments against citizens who did not follow the rules, police authorities cited offences under the PSAPL to file charges of violating regional COVID-19 decrees (NPC Observer, 2022).

## Provisions under Existing Ordinances

Existing health and infectious disease laws also were also used to create emergency and temporary powers for the governments to address the pandemic. **Hong Kong's** Chief Executive invoked the Prevention and Control of Disease Ordinance (2008) in multiple instances to issue COVID-19 executive regulations. Among them, the Compulsory Testing for Certain Persons Regulation (2020) was highly controversial for bypassing formal mechanisms in issuing lockdowns of residential blocks (Davidson, 2021; Thomson et al., 2022).

**South Korea's** Infectious Disease Control and Prevention Act (IDCPA) (2009) was the primary legal used to manage the pandemic. Two provisions of note were (1) a ban on private gatherings of five or more people (Art. 49) and (2) measures relating to the collection and disclosure of information. The latter includes the power for authorities to track the travel history of patients without court orders and request information from various governmental and non-governmental institutions.

In **Japan**, NIA was amended in February 2021 to extend the government's power in enforcing the pandemic measures, particularly those related to the closure of business. NIA was primarily designed to be a legal tool to be invoked under an SoE, but the original provisions lacked enforcement power. The amendment to the provision, including a JPY 300,000 (USD 2,200) fine for breaching the orders made by authorities, equipped the Act with enforcement capacity.

## Restrictions on Civic Freedoms and its Impact on Democracy

Emergency measures were used to restrict civic freedoms on at least four fronts: freedom of assembly and movement, right to take part in elections, freedom of expression, and right to privacy. While restrictions on civic freedoms were observed in all countries in the region, those were more drastic in countries adopting a strict zero-COVID approach without a clear safeguarding mechanism for civic freedoms.

On freedom of assembly, the **North Korean** government used the pandemic as a pretext to shut its borders (cross-border activity was already very limited before COVID). Shoot-on-sight orders near the borderlines were reportedly given (Salmón, 2022). **China** and **Hong Kong** imposed a long-term ban on social activities through enforced lockdowns, especially in highly populated cities, as well as crackdowns on mass protest crackdowns (Aljazeera, 2022). In February 2022, a notable subsidiary regulation in **Hong Kong** (Emergency (Exemption from Statutory Requirements) (COVID-19) Regulation (2022)) granted legal exemptions to medical professionals for actions taken to contain the pandemic under the Emergency Regulations Ordinance (1922). It also facilitated the cross-border transportation of COVID-related goods and food supplies from mainland China (Lee, 2022a; 2022b). In China, these types of measures were relaxed in early December 2022 after protests throughout China demanding the abolishment of the zero-COVID policy (Marlow, 2022). To a lower degree, issues related to the freedom of assembly were also reported in **Japan**. In some instances, the government limited the access of journalists to Cabinet briefings only to those registered with the cabinet press club (RSF, 2022), as a result, excluding freelancers and foreign correspondents.

Elections were also affected by anti-COVID measures. In Taiwan, no provisions were put in place to allow individuals living in constituencies with a high number of infections, and thus in lockdown, to participate in elections. Therefore, anti-COVID measures prevailed. Proposals to do so were denied due to the lack of legal basis to do so. This reportedly affected 75,000 individuals who could not participate in a local election in November 2022 (Chung, 2022). Had they gone to the polls, they could have been fined up to USD 32,000 and sentenced to two years under the COVID-19 Special Act (Sec. 13). In **Hong Kong**, a

Sub-regulation was issued under the Emergency Regulations Ordinance before the then-upcoming election. The Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation declared on 1 August 2020 postponed the Legislative Council General Election by one year. Previous legislation had allowed for elections to be postponed two weeks at a time. The postponement was seen as a political move by the ruling government since it was losing its political grip ([Chueng, 2020](#)).

Authoritarian countries, where zero-COVID was the national policy, saw greater repression of the freedom of expression. Since the outbreak, **North Korean** authorities have reportedly ramped up their measures to stamp out the use of Chinese-made mobile phones capable of communicating beyond its borders. In December 2022, **China** imposed the highest level of internet censorship as a direct response to the growing number of protests nationwide. This included measures to stamp out Virtual Private Networks and police inspection of mobile phones ([Biswas, 2022](#)).

Citizens in the region also witnessed an increase in state surveillance through the deployment of COVID-19 track-and-trace mechanisms. There were initial concerns about data privacy in **South Korea's** COVID-19 management system that relied partly on its advanced track-and-trace digital technology. Its approach was to disclose information providing details on suspected COVID-19 patients to the public ([NHRCK, 2020](#); [Lee & Kim, 2021](#)). That was been mitigated by an amendment to the IDCPA, which excluded the collection of sensitive personal data. The disclosure mechanism itself, however, remain intact, stigmatising infected individuals ([NHRCK, 2020](#); [Gitzen & Chun, 2021](#)).

Compared with these examples, measures in **China** and **Hong Kong** were more restrictive. Surveillance measures included the use of a network of physical devices, contact-tracing apps and mass collection of personal information which afforded the governments to maintain a zero-COVID policy by swiftly containing suspected individuals and locking down high-risk communities. Its structural control over the internet also eased this effort ([He, 2022](#); [VOA News, 2022](#)). This emerged as a major threat to the right to online and offline privacy.

The overall analysis of the state of civic freedoms in the region shows two concurrent patterns. Despite restrictions in **Japan, South Korea** and **Taiwan** through the use of emergency and temporary laws, which caused slight regression in civic freedoms, their overall pandemic management is found not to cause a substantial democratic backsliding. Democratic measurements showed that these three countries scored consistently high throughout the pandemic years ([Freedom House, 2019, 2022](#); [EIU 2019, 2021](#)) ([2019; 2021](#)) noted an increase in scoring across the three countries. On the other hand, "Freedom in the World" Index demonstrated a decline in scores in **China, Hong Kong** and **North Korea** (most sharply in Hong Kong). This is consistent with the EIU data.

## Recommendations and Conclusion

The ICCPR (1966) lays out (Article 4) the obligations states must comply with to protect individuals' civic and political rights. States may derogate from this obligation on the strict conditions that such emergencies constitute a monumental threat, that a SoEs must be officially proclaimed and that powers are to be narrowed in their geographical and material scope. Such measures must not be inconsistent with other international law obligations and not discriminate solely based on race, colour, sex, language, religion or social origin. The governments of Japan, South Korea, and Taiwan, despite difficulties, sought to ensure their COVID-19 approach takes into account the impact on the enjoyment of rights that pandemic emergency measures may entail. China, Hong Kong and North Korea, however, demonstrated the abuse of overbroad restrictions and mass surveillance in the disguise of containing the virus. In this regard, there is a need for government officials, international organisations and civil society organisations to monitor whether these measures follow international standards.

Governments should increase transparency and accountability in implementing emergency measures and must cooperate with civil society organisations in creating a space where the voices of those affected by emergency measures can be channelled. East Asian governments should also design a comprehensive set of laws specific to a particular emergency that include human rights elements. The successful models of Japan, South Korea, and Taiwan can also be shared with other East Asian countries in reimagining their pandemic approach in the future.

International organisations are to encourage countries to fulfil their human rights obligations. They must also provide East Asian CSOs with a platform to raise concerns about the human rights situation during emergencies. This is especially pertinent for CSOs who cannot operate freely in their home countries. CSOs, for their part, should strive to prevent their governments from enjoying impunity over the malafide use of emergency measures and raise awareness of international human rights obligations in times of crisis among the public.

Asia Centre hopes that the recommendations of this policy brief will contribute to creating a framework that ensures respect for human rights in the post-pandemic era and, if necessary, guarantees that people's freedoms will be respected in future emergency situations while preventing the advancement of democratic backsliding observed in some countries in the region.

*Asia Centre is a civil society research institute in Special Consultative Status with the United Nations Economic and Social Council. It was founded in Bangkok, Thailand, in 2015 and a second office was established in Johor Bahru, Malaysia, in 2018. Asia Centre serves as a knowledge partner and undertakes evidence-based research to publish baseline studies and policy toolkits. It also provides training and capacity-building programmes for end beneficiaries such as government officials and universities.*

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