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Normalizing the Exception: Pandemic Governance, Data Use, and Human Rights in Taiwan Multi-layered Crises, Mobilized Solidarity and Stringent Measures

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Normalizing the Exception: Pandemic Governance, Data Use, and Human Rights in Taiwan

Multi-layered Crises, Mobilized Solidarity and Stringent Measures

Although the early SARS-like cases showed up on the radar of Taiwan Centers for Disease Control (CDC) through its monitoring of Chinese social media around the turn of 2020, the initial coverage by Taiwan media were only sporadic as Taiwan was in full gear for its presidential and congressional elections, scheduled for January 12. For the presidential election, the incumbent, Ing-Wen Tsai of the Democratic Progressive Party (DPP), was running against Kuomintang's (KMT, the Chinese Nationalist Party) Kuo-yu Han. Initially a marginal KMT figure, Han seized a rapid rise in 2018 when running for the mayoral election in Kaohsiung, the largest city in Southern Taiwan and which had long been dominated by the DPP. Some attributed Han's success to China's interference, especially on social media.¹ Shortly before he officially announced his candidacy for the 2020 presidential run, Han pledged to strengthen political and economic ties with China by visiting the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region.² Taiwan's presidential election has always been ultimately about a single issue, namely the nature of Taiwan's relationship with China. In 2019, the scenes of Hong Kong protests that filled the news headlines from summer into fall further deepened a concern about the threats posed by China, boosting support for Tsai, who achieved a landslide win. In the Congressional race, DPP lost 7 seats to KMT, but still had a solid majority (61 out of the 113 seats).

As more SARS-like cases were reported in China in January 2020, news about the unknown disease soon filled the void in media reporting left by the end of the election fever. Due to Taiwan's proximity to China, the approaching of the traditional new year, the societal memory of SARS in 2003 (including China's reluctance to share information), it is likely that Taiwanese media paid greater attention to the developments in China than media in other countries. The sense of urgency allowed the Taiwan government to take actions even with rather limited information. The exclusion by the World Health Organization (membership is only given to countries that are members of the United Nations, effectively excluding Taiwan from emergency meetings and important global expert briefings, as well as denying Taiwan access to samples and information) and other international bodies led to an appeal for domestic solidarity. The multi-layered crisis allowed the government to mobilize support for unusual measures in order to stand on its own feet.

¹ Paul Huang, *Chinese Cyber-Operatives Boosted Taiwan's Insurgent Candidate— Han Kuo-yu came out of nowhere to win a critical election. But he had a little help from the mainland*, FOREIGN POLICY (Jun. 26, 2019), <https://foreignpolicy.com/2019/06/26/chinese-cyber-operatives-boosted-taiwans-insurgent-candidate/> (last visited Feb. 23, 2026) The Yomiuri Shimbun, *Taiwan Alarmed by China's AI-Driven Election Interference; Beijing-Based Firm Reportedly Seeks to Shape Political Narratives with False Social Media Accounts*, JAPAN NEWS (Jan. 7, 2026), <https://japannews.yomiuri.co.jp/world/asia-pacific/20260107-302403/> (last visited Feb. 23, 2026)

² Tony Cheung, *Beijing-friendly Taiwanese mayor Han Kuo-yu arrives in Hong Kong for historic meeting*, MY NEWS (Mar. 22, 2019), <https://www.scmp.com/news/hong-kong/politics/article/3002782/beijing-friendly-taiwanese-mayor-arrives-hong-kong-historic> (last visited Feb. 23, 2026)

With the renewed political support that gave the unified DPP government a second consecutive term, the Tsai administration was not shy of showing a strong hand in Taiwan's dealings with China. Taiwan suspended flight routes between China on a large scale earlier than most countries. When the government suspended cross-strait tourism and began the requisition of masks at the end of January, Taiwanese media repeatedly covered stories about Chinese tourists emptying masks from pharmacies shelves in neighboring countries, indicating a dramatic difference in the speed of responses between Taiwan and its neighboring governments.

To secure manpower in healthcare, Taiwan banned medical providers from travelling abroad in February 2020. By mid-March, Taiwan had closed its border to all countries, subjected all inbound travelers to a 2-week quarantine, and connected public and private databases to enforce quarantine and trace potential contacts. Although there were concerns about the legality and appropriateness of some of these stringent measures, the fact that Taiwan was able to keep the case numbers low (most cases were inbound travelers and their contacts) in the early months of the pandemic allowed the government not only to defy criticism but garner support for extending and expanding its pandemic measures throughout the zero-COVID period, which ended as late as May 2022. During the COVID-19 pandemic, Taiwan did not declare a national emergency but promulgated special legislation (Special Act) that gave the executive a wide range of discretion. Concerns about the constitutionality of such a broad delegation were often met with pleas for solidarity or even accusations of being unpatriotic.

Against this backdrop, the Taiwan government did not need to make very elaborate arguments to justify its COVID-19 measures beyond promoting public interests or making a broad-brush claim of protecting the right to life and the right to health. During the zero-COVID period, as additional measures were added on top of existing measures, it was hard to tell which measures were reasonable and which instances of secondary use of data were necessary. Taiwan's daily press conference was often seen as a sign of transparency in COVID-19 policies. The case number report was at the front and center of the daily press conference and news coverage, reinforcing a public aspiration for zero-COVID and expanding the window of tolerance for stringent measures. As yet, there have not been any official ex-ante impact studies or ex-post evaluations of the COVID-19 measures. Publicly accessible data that would enable academic studies are also lacking.

Normalization of Exceptional Measures - During the Pandemic

As the zero-COVID policy lingered on, measures that were adopted in the initial emergency stage were prolonged. The exceptional measures had become the new normal and shaped the daily life of individuals - checking-in to a location with SMS messages (offering their real identity and daily routines for potential contact tracing needs), and seeing cell-towers as an integrated part of a surveillance mechanism that was overwatching everyone 24/7. The extended period of zero-COVID was used to justify pervasive secondary uses of data by government agencies, which repeatedly asserted that the pandemic measures were fully compliant with the

Personal Data Protection Act (PDPA), even though the legitimacy of measures was questioned and their necessity was not evaluated.

Many measures were adopted during the first months of the crisis and without clear legal authorization. Being aware of the criticisms about the broad delegation of power in the Special Act, the government often cited other, pre-existing laws, such as the Communicable Disease Control Act (CDCA), as the legal basis for specific measures. Yet, the articles cited were often interpreted overbroadly to stretch-fit the relevant measures. Scholars have questioned whether the avoidance of citing the Special Act has paradoxically further normalized what were originally described as exceptional measures, i.e. if normal laws could be interpreted so broadly, all these measures implemented during the pandemic became acceptable even without a pandemic.

Normalization of Exceptional Measures - Post-COVID

Taiwan slowly reopened its border in March 2022 and transitioned to live-with-COVID in May 2022 after large community outbreaks. The Central Epidemic Command Center, the taskforce delegated to coordinate pandemic policies, disbanded in May 2022 and the Special Act was sunsetted in June 2023. Although COVID-19 measures also gradually ceased operation, some of their impacts outlived the pandemic through (attempts to) institutionalization.

- **Failed attempt to revamp the CDCA**

In March 2024, the Ministry of Health and Welfare (MOHW) published a draft bill to amend the CDCA. The proposed bill would give the government authority to disclose information about individual cases, intervene in hospitals and daycare centers for pandemic control, and use digitalized measures for quarantine enforcement. The last point was likely a response to the Control Yuan, which raised concerns in February 2022 about violations of due process and inadequate privacy protections in the digital pandemic measures.³ The draft bill addressed former criticisms by adding clear legal authorization in the CDCA. On the issue of privacy protection, the bill questionably proposed that personal data be exempted from Personal Data Protection Act (PDPA) during the whole pandemic, without the need to justify such data as minimum and necessary. The MOHW shortened the period for public comment from the normal 60 days to 14 days. Even though the bill was announced almost a year after Taiwan transitioned into live-with COVID, the MOHW claimed that there was an urgency to fill the gap left by the sunset of the Special Act in June 2023.⁴ Although this bill was not submitted to the legislature, its production

³ CONTROL YUAN, INVESTIGATION REPORT NO. 111-SOCIAL-INVESTIGATION-0006 (2022).
<https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=17787>

⁴ Ministry of Health and Welfare, *Announcement of Proposed Amendments to Certain Provisions of the Communicable Disease Control Act*, PUBLIC POLICY NETWORK PARTICIPATION PLATFORM (Mar. 11, 2024), <https://join.gov.tw/policies/detail/7d5c749e-9e4e-478b-9c9e-808f47f444ac> (last visited Feb. 23, 2026)

demonstrates the attempts by the executive power to normalize the types of measures adopted in the emergency, both substantively and procedurally.

- **Turning the National Health Insurance Card into the Default ID**

In 2021 and 2022, the government issued stimulus cash for all citizens and resident aliens. Since the National Health Insurance (NHI) card has a smart chip, the government used it as a way to distribute the funds. Individuals could receive cash by visiting the Post Company with their NHI card. This kind of function creep has existed since 2015, since when the NHI card has been used as the vehicle for identity verification for government online services. Until the COVID-19 pandemic, government online services using NHI Cards had been limited to tax-paying. The stimulus cash raised new issues as the distribution was through the Post Company, a private entity. There were also potential privacy concerns as it was not clearly explained what information would be available to the Post Company through the card reader.

In 2025, the government had a tax revenue surplus and issued a general cash refund. The refund was distributed through the Post Company (in person and through ATMs) and major banks (through ATMs). The above privacy concerns for card readers remained unaddressed and further broadened the number of private entities able to collect the NHI card number of individuals.

Normalization beyond COVID Exceptional Measures - Embracing Digital Measures with Widened Secondary Use of Personal Data

The attempts to institutionalize the measures directly related to COVID-19 mostly failed. Nevertheless, one should not overlook the normalization of the rationales that underlie these exceptional measures, especially the linking of various public and private databases as a way to empower the government to achieve policy goals. Such rationales have been boosted by the rhetoric of digital democracy as a narrative for Taiwan's early success in pandemic control (i.e. engaging civil-tech community to develop digital tools for pandemic control that abide to basic privacy principles), as well as Taiwan's identity as an AI-powered economy at a time of geopolitical uncertainty.

- **Anti-Fraud Legislative Package in 2024 (Enactment of the 2024 Fraud Crime Hazard Prevention Act and Amendment to the Communication Security and Surveillance Act)**

The Taiwanese government's inclination toward normalizing digital surveillance measures from the pandemic period has not been confined to the medical and public health sectors. The legislation introducing the most comprehensive digital surveillance measures after the COVID pandemic was actually the Fraud Crime Hazard Prevention Act (FCHPA) and the Communication Security and Surveillance Act (CSSA), enacted and amended in 2024 to combat fraud crimes. The

FCHPA stipulates that financial, telecommunications, and online advertising platform institutions must collect, process, and store customer data for at least five years. The CSSA permits prosecutors to obtain communication records and internet traffic records for investigating fraud crimes. Both laws significantly relax the conditions for storing financial, telecommunications, and advertising placement data, as well as for obtaining communication and internet traffic records for criminal investigations.

- **Draft Regulation on Data Innovation and Utilization for Development**

The Ministry of Digital Affairs proposed a draft regulation to facilitate and encourage open data by the government, the sharing of data between government bodies, as well as the sharing of data between public and private entities. This bill gives a government body wide permission to request data from other government bodies, if such a request is to improve efficiency, promote service quality or for policy research. Given the inadequate data protection mechanism, there is concern that this clause would allow the government to bypass the Personal Data Protection Act (PDPA) and the 2022 Taiwan Constitutional Court's (TCC) ruling (see below) and become a blank slate for secondary use of data. Also controversial in this bill is a peculiar clause on "data altruism." Unlike the normal understanding of data altruism, in which the agency to volunteer data is rested with data subjects, this bill considers data as the property of the data controller, who would be entitled to volunteer all the data under its control for a wide range of public interest purposes.

Minimal Amendment to the PDPA: A Missed Opportunity to Address Structural Weakness

The PDPA, enacted in 1995 and substantially unrevised since, has serious structural weaknesses. With outdated definitions and regulatory structures, it struggles to cope with ever-evolving technologies of data collection and processing in both private and public sectors.

In 2022, in a case about the secondary use of health data in the National Health Insurance Database (NHID), TCC declared that the PDPA was unconstitutional for lacking an independent supervisory mechanism and required the legislature to enact legislation compliant with the constitutional decision within three years. Nevertheless, despite the plaintiff and expert witnesses repeatedly raising concerns about the inadequate pseudonymization practices, the TCC ruled that it is constitutional for the PDPA to give access to a broad range of secondary use of sensitive personal data where adequate technological safeguards are in place.

During the COVID-19 pandemic, the lenient regulation and interpretation of "data processing" in the PDPA has enabled the government to expand the duration, scope, and means of exceptional surveillance measures in the name of crisis management. The problems are not limited to the normalization of exceptional digital surveillance measures, such as the identity notation of healthcare personnel on National Health Insurance cards and the linking of the NHID system with

criminal investigations and various government systems. Rather, the impact of PDPA's ineffectiveness has extended well into multiple areas, as mentioned in the previous section.

Given the need to respond to drastic technological developments since 1995, as well as the pressure to meet the adequacy requirement in the EU General Data Protection Regulation (GDPR), a revamp of the PDPA has been long anticipated. In October 2025, Taiwan's Legislative Yuan finally amended the PDPA. But to the disappointment of many, the revision was only minimal - merely adding provisions regarding the organization and competence of the independent supervisory agency, the "Personal Data Protection Commission." This limited revision reflects Taiwanese government's stance of prioritizing the utilization of personal data, a stance that might have been emboldened by an official narrative attributing Taiwan's early success in controlling the COVID-19 pandemic to the government's ability to link to a wide range of data.

Although the 2025 PDPA amendments were not intended to "normalize" digital surveillance measures that had experienced function creep during the COVID period, they failed to address the inherent problems of overly lenient legitimacy conditions for processing sensitive personal data and using personal data beyond original purposes. Because of this failure, the PDPA's structural weaknesses remain. The PDPA continues to make it easy for the government to engage in secondary use of personal data under the banner of "altruism" or the "public interest".

The controversies regarding the 2025 National Health Insurance Data Management Act (NHIDMA) and the 2024 next-generation sequencing (NGS) treatment provide clear illustrations of this problem. The 2025 NHIDMA, also enacted in response to the 2022 TCC ruling, while incorporating an opt-out mechanism, simultaneously permits broad commercial utilization of health insurance data by government, medical, and research institutions. In 2024, despite repeated and severe criticism from human rights organizations, the MOHW continued to assert on multiple occasions that the "voluntary" upload of genetic data to the NHID by (suspected) cancer patients was a prerequisite for covering Next-Generation Sequencing-based diagnosis and treatment under the National Health Insurance scheme.

In both times of crisis and times of normalcy, the PDPA, as the fundamental framework for personal data protection, has shown its lack of capability to ensure the government provides sufficient institutional safeguards. As many governments have bought into the rationale that more access to data is inherently better for policy-making, a strong data protection mechanism is even more important than before. This rationale is also embraced by Taiwan as an iteration of digital democracy, putting the emphasis more on Taiwan's tech savviness than on democratic participation. "Digital democracy" is many things, but fixing the PDPA to provide stronger safeguards for individuals' informational privacy is a first step to live up to the claim.

Recommendations:

1. The Taiwanese government framed its COVID-19 pandemic governance as a model of "digital democracy." This report indicates that this narrative emphasizes technological capacity, overstates the scale and nature of democratic participation, and underplays the excessive burden placed on several groups of populations. When engaging with Taiwan, the EU should distinguish between diplomatic framing and the actual realities of governance, especially the impact on human rights.
2. Local scholars and human rights organizations have long criticized the Taiwan PDPA for its lenient regulation, including its broad interpretation of "de-identified data", which enabled a wide range of secondary use of data, and for the lack of an independent supervisory mechanism. These structural weaknesses of the PDPA are especially pronounced in the contemporary technological environment, where the government is inclined to prioritize the utility of data over privacy protection. Given the adequacy requirement in the GDPR, the EU is well placed to pressure Taiwan to take a more proactive position to update its PDPA.