

Breeding More Social Turbulence? – Thailand’s Unprepared Response to the Second Wave of COVID-19

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Overview

COVID-19 posed one of the biggest challenges to the government of Prayuth Chan-ocha, the former junta leader and current prime minister. He successfully controlled the first round of pandemic, which spiked in mid-March by enforcing disproportionately harsh measures for unnecessarily prolonged period. The first round subsided by early-May, allowing Thailand approximately eight months to prepare for the second wave that arrived in late December. However, that opportunity was wasted as the government spent most resources cracking down [anti-government protests](#), the largest ever in Thailand’s modern history. The government was oblivious to the worsening COVID situation in neighbouring Myanmar and the lesson from around the world about the migrants as COVID hotspot. It has spent significant portion of its budget on [weapon procurement and the palace](#) instead of on COVID-related issues. Rampant corruption was another negative factor. The second wave of the pandemic stemmed from, first, [Burmese migrants](#), many of whom illegally entered, and second, several gambling dens. Both causes were allowed because of corruption. But the government’s response was more cautious as the first lockdown has already wrought unimaginable havoc to Thailand’s economy. This article discusses the government’s failure to utilize emergency power to manage COVID-19 and assesses adverse effects brought about by the prolonged state of emergency.

Exercise of Emergency Power

The main tool of the government in tackling COVID is the [Emergency Decree 2005](#) (2005 Decree) despite several other pieces of ordinary legislation being available. The Decree authorized vast, unlimited, power to the prime minister as the head of the emergency command. It carries penalty of no more than two years imprisonment and 40,000 THB fine. Under the 2005 Decree, the government set up the Centre for COVID-19 Situation Administration (CCSA) which is supported by two sub-panels of the Medical Advisory Board and the Recovery Advisory Board. Another law is the Communicable Disease Act 2015 which appoints the Public Health Minister as the head of the communicable disease board. However, the PM claimed that the Communicable Disease Act was inadequate without specifying how and therefore needed revision. In reality, the government used both laws almost interchangeably. A person might be liable under the two laws for one offence.

Three factors shape how the Thai state exercises its emergency power against COVID. First, the government's mentality is militarized. From 2014 to 2019, the country was under the dictatorship regime of Prayuth before he won [a questionable 2019 election](#). The choice of expansive, unaccountable, emergency law over ordinary laws suggest the legacy of that dictatorship era. The Prayuth administration described COVID as an enemy and set an unrealistic goal of zero transmission. Thus, it launched [a decisive yet devastating campaign](#), locking down the whole country into August. No repatriation flight was arranged and thousands of Thais around the world were marooned. Being obsessed with defeating the pandemic, the government fails to propose sound economic recovery package in time. The damage to economy and livelihood cannot be overstated. Unemployment rate soared to record height. People committed suicides. It also fuelled anti-government protest which has been ongoing since July 2020.

Secondly, public administration is [ineffective](#). Under military regime, cronyism had weakened the civil service which became unresponsive. The problem is exacerbated by Prayuth's lack of leadership. He set no common goal for his administration to follow. There were turf wars among his ministers e.g. the Public Health Ministry versus the Commerce Ministry over medical supplies. FDA [forbid](#) private hospital from procuring COVID vaccine before acquiring FDA's approval. Yet, the government [could not secure enough doses of vaccine](#) for the whole country due to its own red tape. Sometimes agencies fought over who should implement the order. Some policies actually yielded opposite outcomes of what they were intended. When the government controlled the price of facial masks, the crackdown disincentivized manufacturers to step up production. Overall, Thai bureaucracy appears incompetent.

There is also much confusion in decision making. When CCSA delegated decision regarding restaurant opening time to Bangkok Metropolitan Authority (BMA), BMA decided to limit opening time to only 7 pm. But that evening, Prayuth personally [overturned](#) BMA's decision, reversing it to 9 pm. When CCSA spokesperson threatened to charge those who failed to install a tracing application on smart phones, the Public Health Minister rebuffed that threat before deleting his message. Then the spokesperson [retracted](#) his remark that night too.

The third factor is the state's connection with big business corporations, leading to possible conflict of interests. In the extreme case, the government deleted a convenient store run by one of these big businesses from the patient's timeline in order to avoid defamation lawsuit, therefore, putting public safety to peril. They enjoy privilege as the government allowed them to hold festive events when other smaller businesses are told to cancel theirs. Vaccine would be provided by few firms with powerful connection to the government.

Oversight

The state of emergency has been extended nine times until 28 February 2021. However, neither parliamentary nor judicial oversight of an emergency declaration is available under the 2005 Decree. The PM, with his cabinet approval, may declare

a state of emergency nationwide or partially for no more than three months. Yet, its three-month extension without parliamentary approval is also allowed. Nevertheless, even if legislative checks were in place, current Parliament is under the PM's total command. In February 2020, the Constitutional Court dissolved one of [the main opposition parties](#).

Meanwhile, an ouster clause enshrined in Section 16 of the 2005 Decree also bestows the cloak of legal immunity upon all relevant by-laws. In March 2020, the Civil Aviation Authority of Thailand ('CAAT') issued a regulation requiring all inbound passengers to acquire 72 hours before boarding an aircraft a fit-to-fly certificate declaring COVID-free. Given that the estimated incubation period of a coronavirus virus is between 1 and 14 days, the regulation was challenged for its unsuitability before the Administrative Court of First Instance. However, at the time the litigation was filed, this requirement had already been incorporated into the COVID-19 Regulation enacted under the 2005 Decree. Yielding to Section 16, the court declared the case dismissed. This order was later reversed in December 2020. Since the object under review is the CAAT regulation not the COVID-19 Regulation, the Supreme Administrative Court declared the litigation justiciable. Yet, the case is now simply symbolic and the rationale behind this ruling still upholds the inviolability of Section 16.

Given the absence of formal legal constraints, informal checks from civil society become crucial. During the first wave in early 2020, the CCSA closed places of social assembly such as department stores, restaurants, sport stadiums, resulted in socio-economic grievances, in particular, job losses. The government was vehemently blamed for its maladministration. Due to immense social outcries, the government, in response to the second wave, therefore strives to mitigate adverse lockdown effects. It applies zoning and only [a partial lockdown](#).

Local authorities

One of the most useful tools against COVID is [the network of local health volunteers](#) who monitor the situation at a village-level. Yet, the government refuses to acknowledge the benefit of and promote further decentralization.

As a state of emergency has been installed to tackle the spread for almost a year, decision-making has largely been monopolised by the central government. Locally, the government has delegated authority to Bangkok-appointed provincial governors, rather than decentralized local authorities ('DCA'), notably municipalities, by virtue of the Communicable Diseases Act 2015 to issue ordinances necessary to circumvent the spread of the virus within their jurisdiction. The suspension of local elections at all levels by the junta between May 2014 and December 2020 has also partially limited the role of DCA in taking part in determining the national COVID-19 preparedness and response plan. Centrally appointed from Bangkok rather than locally elected, provincial governors, no doubt, appear to be more concerned with ingratiating themselves with the central government, including by imposing unnecessarily harsh measures with adverse effects on civil rights (see below). Yet, the centrally appointed system does not entail collaboration and

coordination between local and central government. For instance, on 3 January 2021, Prayuth issued an emergency regulation, ordering closures of all schools and universities; yet, still allowing the use of their premises to conduct online teaching. Five days later, the Pathum Thani governor nevertheless ordered close down of all local schools and universities, including the absolute prohibition of the use of their buildings.

Notwithstanding the absence of formal delegated authority to DCA, some municipalities choose to take active steps for tacking the outbreak given that the Thai government is very slow in [securing COVID vaccines](#). [Nonthaburi Municipality](#), for instance, prepares a budget of THB 200 million for purchasing vaccines for its local citizens. Other provinces are following suit. This example ostensibly accentuates the importance of decentralization and DCA.

Civil Rights

With oversight virtually non-existent, the state feels little restrained from issuing measures that disproportionately encroach upon civil rights. Some preventive measures such as a ban on selling alcohol do not seem to be effective against COVID prevention. Worse, some orders are issued with immediate effect. Many provinces have imposed a travel ban without a permit. In one case, CCSA announced the [ban](#) in the evening. The ban forced thousands of residents unaware of the coming measure to gather at the authority's office to obtain a permit for the next day's commute, posing them to greater risk of COVID. Pitsanulok, a province in a green zone, imposed a 14-day quarantine requirement for those traveling from the red zone. The quarantine order was issued on the eve of New Year when thousands were on the way to their hometown.

Other mistreatments were likely genuine mistakes. In Trang, those who underwent quarantined were provided with only [small tents by roadside](#) without proper cover from heat and rain. Better accommodation was provided after complaints reached the media.

But the most serious concern about civil rights is the state's policy on a contact tracing application. By April, the government plead that Thais download the state-sponsored Thai Chana (Thai Win) application on their smartphones. The application was [criticized](#) because it harvested much sensitive information, including locations. Although the government tried to guarantee that users' privacy would be respected, that guarantee was not enough to convince many Thais. The government had troubled past record regarding IT and privacy. Throughout his administration, Prayuth has been obsessed with having total control over internet and personal life of the citizen. Despite the vow that data would not be misused, that vow carried little convincing weight. Fortunately, the government did not make the application mandatory. People who opt out could still register manually when they get in and out of stores or restaurants.

In January, without giving any reason, the government suddenly promoted another application, Mor Chana (Doctor Win). According to the CCSA Spokesperson, a

COVID patient whose smartphone had no Mor Chana application was liable for a criminal charge of deliberately hiding crucial information, an offence with jail sentence. His remark caused much uproar as the public felt that the CCSA arbitrarily expanded an interpretation of 'hiding crucial information' to another level. Later that evening the Public Health Minister rebuffed that the CCSA's interpretation had no legal binding, a statement that the CCSA Spokesperson subsequently repeated. However, millions of Thais have already installed such application out of fear.

Outlook?

COVID hits Thailand at a particularly vulnerable time. Thai politics has been badly polarized so Prayuth's supporters would always approve his mismanagement no matter how terrible it was. Prayuth seriously lacks leadership skill vital to navigate the country through a difficult time. His profile as the junta leader does not help. Years under dictatorship results in denialism within the bureaucracy and widespread corruption, both of which hinder effective decision-making.

The government cares too little about economic relief, partly because of its close connection with many big corporates that benefit greatly from disruption on small and mid-scale businesses and from the government's stimulus packages. Prayuth is more concerned with the government's security threatened by looming pro-democratic protests. He keeps renewing the emergency decree and utilize it for a crackdown, not for COVID management.

Bad policies and widening economic gap, plus a callous government, are dangerous mixture that could breed violence, which, many Thais feel, is already around the corner.

