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# The Oxford Compendium of National Legal Responses to Covid-19

## **People's Republic of China: Legal Response to Covid 19** China [cn]

**Zhiqiong June Wang, Jianfu Chen**

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**General editors:** Prof. Jeff King; Dr. Octavio Ferraz

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Except where the text indicates the contrary, the law is as it stood on: 31 March 2021

*Covid-19 first emerged in the Chinese city of Wuhan in late 2019, with the first mass outbreak starting there in January 2020. According to media reports, the earliest cases (though not 'Patient Zero') could be traced to as early as 17 November 2019.<sup>1</sup> A historically unprecedented lockdown of an entire city of 11 million people and, slightly later, an entire province was imposed on 23 January 2020.<sup>2</sup> The lockdown measures were so severe and strict that they were described by the World Health Organization's country representative to China, Dr Gauden Galee, as 'new to science' that 'has not been tried before as a public health measure.'<sup>3</sup> Various restrictions were also imposed nationwide from January to April 2020. Through these lockdown measures, China seemed to have controlled the 'first wave' of the pandemic by early April 2020 when Wuhan began lifting its strictest lockdown measures including the blockage of outbound traffic. On 7 April 2020, the Central Leading Group for the Prevention and Control of Novel Coronavirus Pneumonia Epidemic and the State Council Joint Mechanism for the Prevention and Control of Novel Coronavirus Pneumonia Epidemic each released its guidelines on resumption of work in China.<sup>4</sup> By June 2020, China had declared a 'decisive victory' over the pandemic and a return to normality, albeit with ongoing prevention and control.<sup>5</sup>*

*Unfortunately, this declaration of a 'decisive victory' seems to have been made prematurely; isolated cases were to pop up continuously in various parts of China, with considerably large numbers of cases re-emerging in several cities in Northern China in November/December 2020. Like all other countries, the fight against the pandemic is ongoing in China. As of 20 March 2021, official statistics suggest that mainland China had 165 active cases, but none with severe symptoms. In total, there had been 4,636 deaths and 90,099 confirmed cases.<sup>6</sup>*

*This report principally focuses on the responses to the first wave of the Covid-19 outbreak in Hubei Province (January to April 2020), during which the great majority of legal and policy measures were issued. Similar measures were often implemented in other cities in Mainland China whenever Covid-19 cases were discovered. We have, however, also covered measures and policies issued after the suppression of the first wave of the Covid-19 crisis, as these can be seen as measures and policies for Covid-19-normal times that are likely to be with us for some considerable time to come.*

*At least in the initial stage, the fight against the epidemic was largely carried through ad hoc Party—the Communist Party of China (CPC)—and government orders, issued mostly at the various local levels. There is however a comprehensive national legal framework governing public health emergencies, a framework that was largely ignored at the initial stage of the fight against the Covid-19 crisis.<sup>7</sup>*

*It should be pointed out that this report does not engage in discussion or debate on the origin of Covid-19; the authors believe that the origin of Covid-19 should be treated as an issue of science that is best addressed by scientists rather than lawyers.*

## I. Constitutional Framework

1. The Chinese Constitution (1982), initially adopted in 1982, and revised in 1988, 1993, 1999, 2004, and 2018, is declared a 'fundamental law' with a 'supreme legal effect',<sup>8</sup> and stipulates fundamental rights and freedoms. It is however commonly perceived in China as a set of general rules and serves the state as a fundamental charter of organisation,<sup>9</sup> containing only the 'very fundamental and necessary' provisions that can be decided at the time. In other words, there are no detailed rules on checks and balances and the general rules are meant to be changed whenever the need for changes is perceived by the CPC. Indeed, like constitutions in all other socialist (or the then socialist) countries, it is also a soft law that is frequently revised by the National People's Congress upon 'suggestions' from the CPC. As such, the constitution in China has been in a constant state of flux, reflecting changes in the CPC leadership and in its policies about the kind of future society it envisaged. It is not surprising, therefore, that in a history of around 70 years the People's Republic of China (PRC) has had four different constitutions, the fourth (current) one being amended five times already since its adoption in 1982. Nevertheless, seen as the 'mother of all laws',<sup>10</sup> the Chinese Constitution does set parameters for social and legal development, lay down basic principles for power structures and authorities, and set out boundaries for the exercise of state powers (including emergency powers) by the various state authorities.

2. While the Party/State authorities emphatically reject the doctrine of the separation of powers and insist the supremacy of the CPC leadership in all spheres of the State, Chinese jurisprudence does make a distinction between different state powers—the legislative, judicial, and executive. While judicial independence, as it is understood in the West, is not recognised in China, adjudication and prosecutorial independence is recognised by the Constitution. Further, through the 2018 revision of the Constitution,<sup>11</sup> a fourth branch of state power, the power of supervision, was added. The Chinese constitution thus establishes, on paper, a four-pillar structure of state powers: (1) legislative, ie people's congresses at the various levels and their standing committees; (2) the executive, ie the State Council and local governments; (3) the judicial, ie courts and procuratorates; and (4) supervisory, ie the State Supervision Commission and its local counterparts, each of which is in fact a joint establishment with the CPC Disciplinary Inspection Commissions. Theoretically, the legislative is to exercise law-making powers, the judiciary the adjudication and prosecution powers, the executive the administrative powers, and the supervisory the anti-corruption powers. However, these lines are not clear cut. For instance, practically all branches of the government have law-making powers in practice, and both the legislature and the judiciary exercise certain supervisory powers over the government, but none of the state authorities have any supervision power over the CPC authorities.

3. The people's congresses are established at each of the township, county, prefectural, provincial, and national levels. The National People's Congress (NPC) at the national level is defined as the 'supreme organ of state power'.<sup>12</sup> It consists of about 3,000 deputies,<sup>13</sup> elected for a term of five years by the people's congresses at provincial level in accordance with the Electoral Law of the NPC and Local People's Congresses,<sup>14</sup> and by the People's Liberation Army according to the Measures on the Election by the People's Liberation Army of Deputies to the NPC and to Local People's Congresses.<sup>15</sup> Under the Electoral Law (1979) direct elections are only held at the township and county levels; deputies to higher-level congresses are elected by the congress at the level immediately below.<sup>16</sup> The NPC—and its counterparts at all sub-national levels—is only convened once a year for about two weeks and, as such, is hardly capable of exercising the constitutionally defined powers. In practice, it is its Standing Committee (SCNPC), which is mostly convened bi-monthly, that actually does so. The SCNPC, currently comprising 175 members elected by the NPC,

establishes subcommittees, including the Legislative Affairs Committee (*Fazhi Gongzuo Weiyuanhui*), as its functional departments.

**4.** The State Council, composed of the Premier, Vice-Premiers and State Councillors, Ministers, the Auditor-General, and the Secretary-General, is defined as the executive body of the highest organ of state power and the highest organ of state administration.<sup>17</sup> It also has very extensive law-making power. The 1982 Constitution introduced a system of the premier being responsible for the whole State Council, and a minister being accountable for ministries and commissions of the Council.<sup>18</sup> Under this system the premier and ministers have the power of decision-making, while also being held responsible for their decisions.

**5.** The judiciary, commonly understood to include courts and procuratorates, exercises adjudication and prosecution work independently. On the one hand, the Supreme People's Court and Supreme People's Procuratorate have some extended rule-making powers but, on the other hand, the judiciary as a whole is not an independent authority in the sense of separation of powers. Put simply, the Chinese judiciary does not enjoy the privilege and protection of judicial independence as understood in the West. It is under the strict control of the CPC.

**6.** Importantly, China is also a One-Party state in which the CPC has a vague status in the Constitution but asserts absolute control over all state affairs. One of the major post-Mao reforms had been, until very recently, to separate the Party from the State. However, China under Xi Jinping has reversed the previous reform efforts, with an increasingly tight integration of the Party and the State.<sup>19</sup> One of the consequences of this integration—as revealed in the fight against Covid-19—is the practical gap in law, as Chinese law, mostly enacted before Xi came to power, has no legal provisions for Party decision-making in state affairs. Another consequence is that the supposedly merit-based bureaucratic system was largely paralysed and the initial responses to the outbreak were seriously delayed by the inaction of the CPC leadership at both national and local levels.<sup>20</sup>

**7.** The integration of Party and State, though raising questions of legality and causing hesitancy in decision-making in the initial responses to the Covid-19 crisis, does ensure the joint command and coordination among different authorities, with a single-minded determination to control the epidemic, almost at all costs. As such, there has been hardly any room for disputes or conflict among different authorities, thereby preempting the initial inaction and passivity among local authorities and bureaucracies that might attend a system with more checks and balances.

**8.** China is the most populous as well as one of the largest countries in the world. Yet, it is a unitary state with all central authorities established in Beijing. Below the central government are state and government authorities established at the provincial, prefectural, county, and township levels, each of which, to a varied extent and depending on its financial resources, mirrors those established in Beijing.

**9.** Central-local relationships have been a struggle in China for centuries and modern China in the last 100 years or so is no different.<sup>21</sup> Suffice to say, financial and tax powers in China today are shared between central and local governments, and laws and regulations are made by both central and some 353 local authorities that have been granted formal law-making power under the 2015 revised Law on Law-making.<sup>22</sup> The large number of local law-making authorities was a result of the 2015 revision made to the Law on Law-making that expanded the grant of such power to many more local authorities. Such an expansion also led to concrete development and establishment, after many years of academic debate and discussion, of a mechanism for consistency (constitutional) review. In relation to public health and health (and other natural disaster) emergencies, a relatively comprehensive

legal framework is established at the national level, with uniform standards and mechanisms for local implementation.

**10.** Theoretically, the national health authority, its local counterparts, and their subordinates are primarily responsible for all health-related issues including health emergencies and epidemics/pandemics, with local authorities being subject to guidance from their superior authorities while also under the leadership of local governments. The national health authority was initially named the Ministry of Health. In 2013, the Ministry was first restructured and merged with other authorities to form the State Commission on Health and Family Planning, and the latter Commission was further restructured and then became the National Health Commission (NHC) in 2018.<sup>23</sup> These reforms were also carried out at local levels in exactly the same way.

**11.** In the present fight against Covid-19, most decisions were, however, either made or approved by the CPC authorities with ambiguous legal status within the Chinese legal system, in line with the integration of the CPC and the State, and carried out by many organizations including the police and residential/township committees. The national health authorities were largely reduced to being technical authorities, issuing guidelines and information, instead of binding legal measures to fight against the Covid-19 crisis. Further, the widespread use of punitive measures by local authorities during the first wave of Covid-19 has led to a change in legislation—the expansion of local powers to impose administrative penalties—in the form of revision of Article 12 of the Law of the PRC on Administrative Penalties in January 2021.<sup>24</sup>

## II. Applicable Legal Framework

### A. Constitutional and international law

**12.** In the Chinese legal system, legal instruments ('laws') include: the *Constitution*, *basic laws*, and *other laws* enacted by the NPC and its SCNPC (primary legislation); *administrative regulations* issued by the State Council; *administrative rules* issued by ministries and commissions under the State Council; *local rules* issued by local legislature and local governments; and *judicial interpretations* issued by the Supreme People's Court and Supreme People's Procuratorate. The CPC has its own system of rule-making and rules, but their rules are only applicable, theoretically, to Party members and Party institutions.

**13.** In light of the strict (often described as draconian) lockdown measures imposed in many cities, or parts of a city in late 2020, in China, it has been puzzling to many that an emergency, either for a specified area or for a province or even nationwide—as indeed most cities in China were partially locked down—was never declared.<sup>25</sup> The fact that an emergency was never declared, in contrast to many other countries where such an emergency was promptly declared to allow the application of restrictive and emergency measures, is particularly strange in light of the 2004 constitutional revisions.<sup>26</sup> The original 1982 Constitution provided the SCNPC with the power to declare a martial law (*jieyan*) to be implemented throughout the country or in a province. The State Council was also granted the power to do the same in parts of any province.<sup>27</sup> During the 2004 revision of the Constitution, it was decided to replace the power to impose martial law with a power to declare a state of emergency (*jinji zhuangkuang*), and revisions to Articles 67(20) (Powers of the SCNPC),<sup>28</sup> 80 (Powers of the President), and 89(16) (Powers of the State Council) were made. To implement this constitutional change, a law on emergency was proposed but to this day not enacted. This means that there has been a lack of detailed procedures for declaring an emergency, but at the same time it is clear that an emergency can be declared by either the SCNPC or the State Council, depending on the scope of application of the

declaration. This choice not to do so is not only puzzling but, importantly, casts a shadow over the legitimacy and legality of many lockdown measures imposed in China.

**14.** Restrictions were quickly imposed nationwide. Indeed, by 30 January 2020, 31 provinces and autonomous regions had invoked Level I (the highest level) Response to Public Health Emergency in accordance with the National Contingency Plan.<sup>29</sup> The invocation was made in the absence of a declaration of a state of emergency, and in the absence of such a declaration, the Constitution and all laws and regulations protecting basic rights are, theoretically, to continue their normal operation. In reality, as will be discussed in Part IV below, hard lockdown was imposed in January 2020, initially in Wuhan but soon for the whole province of Hubei and many other cities in China. In the ‘second wave’ in November/December 2020 to January 2021, hard lockdowns were imposed in districts of cities or residential blocks. These hard lockdown measures effectively shut down all services and movement, including public transport, except the very essential services such as hospital and delivery services. Although not explicitly ordered to do so nor formally announced, legislatures—ie standing committees of local people’s congresses—were shut down and access to courts was made physically impossible. The only explicit provision in terms of suspension of the legislature was a decision made by the SCNPC on 24 February 2020 to postpone the convening of the Third Plenary Session of NPC, which was originally scheduled to start from 5 March 2020.<sup>30</sup> A shortened Third Plenary Session of NPC was finally convened between 22–28 May 2020.

**15.** As explained above, in the absence of a declaration of a state of emergency, international conventions to which China is a party would continue to operate. At least, there was no formally notified decision by China to derogate from any international conventions or treaty obligations.

**16.** According to the China Covid-19 White Paper,<sup>31</sup> China apparently has maintained close and regular contact with the World Health Organization (WHO), at least since the end of 2019 and early 2020. However, none of the publicly issued legal and executive notices and orders referred to any standards developed by the WHO. This is not unusual. China rarely directly implements any international treaties or standards; China either incorporates international obligations into domestic law or, sometimes, applies international treaties in court proceedings.

## **B. Statutory provisions**

**17.** As alluded to above, at least in the initial responses to the ‘first wave’ of the mass outbreak in January 2020, the relevant national legal framework was largely ignored, and little in actual practice—mostly local in nature—conformed with Chinese national law. Thus, for instance, a public health emergency could be declared by either the SCNPC or the State Council, but none did so in the fight against Covid-19. Further, control measures were mostly issued by joint authorities of the Party and the government, leaving little room for supervision or approval by the legislature. This is so (as will be explained in Part II.C below) because the CPC is not subject to supervision by any state authorities. At the same time, however, some specific powers were granted by local legislatures to local governments to issue lockdown measures, including penalty measures,<sup>32</sup> when in fact the whole battle was largely directed by local joint Party-Government command centres which have little status in law. It should however be pointed out that, upon achieving control of the first wave of the epidemic, increasing emphasis has been placed on compliance and improvement of law.

**18.** The Chinese legal framework on public health emergencies, as a special part of a general legal framework on emergencies, was partially established in 1989, when the Law on Prevention and Treatment of Infectious Diseases 1989 was enacted by the SCNPC,<sup>33</sup> and incrementally improved, strengthened, and expanded after the SARS epidemic of 2002/2003, the H1N1 flu epidemic in 2009, and the H7N9 avian flu epidemic in 2013, and formally revised and reissued in 2004 and 2013.<sup>34</sup> The other main statute is the Law on Emergency Responses 2007,<sup>35</sup> which regulates responses to natural disasters and accidents, including public health emergencies. These are the two pieces of national primary legislation constituting the legal framework for the regulation of public health emergencies. Compliance with them is addressed in the Part IV.B below.

### **C. Executive rule-making powers**

**19.** At the national level, the principal health emergencies framework laws and rules, in addition to the Law on Prevention and Treatment of Infectious Diseases 1989 and the Law on Emergency Responses 2007 discussed above, also include the following subordinate legislation:

- (a) Regulations issued by the State Council:
  - (i) Regulation on Responses to Public Health Emergencies 2003;<sup>36</sup>
- (b) Measures issued by the Ministry of Health (now the National Health Commission):
  - (ii) Implementing Measures for the Law on the Prevention and Treatment of Infectious Diseases;<sup>37</sup>
  - (iii) Administrative Measures on Information Reporting and Monitoring of Infectious Diseases and Public Health Emergencies;<sup>38</sup> and
  - (iv) Plan for Information Disclosure on Epidemics of Infectious Diseases and Public Health Emergencies.<sup>39</sup>

**20.** Also at the national level, there is the Regulation on Open Government Information,<sup>40</sup> which imposes an obligation, among others, on governments to issue information that might affect public health. Further, there are laws on the prevention and control of infectious diseases among animals, laws on quarantine at national borders, and other specialist laws. Finally, as in many other areas of Chinese law, the above national legal framework is implemented by local rules, and national laws are further elaborated by general judicial interpretations issued by the Supreme People's Court and Supreme People's Procuratorate. The whole legal system on public health and emergency is currently undergoing a process of review and revision, but there have been no new laws issued to specifically address the Covid-19 health emergency.<sup>41</sup>

**21.** The fundamental objective of the national legal framework composed of the main statutory and executive legislation is to establish a unified national system that addresses both the prevention and control of infectious diseases, and responses to emergencies. For operational purposes, four unified national systems on prevention and control of infectious diseases and responses to emergencies have been prescribed by law:

- (1) there is to be a national system of contingency plans, consisting of plans prepared by government departments at different levels, and enterprises and institutions that might potentially cause emergencies.<sup>42</sup> These plans are to be made in accordance with the character and potential social harm of the emergencies, and must spell out in detail the command system and its

responsibilities, the prevention and warning of emergencies, response procedures, measures for securing the responses, and measures for post-emergency rehabilitation and reconstruction.<sup>43</sup> At the national level, the State Council itself must have an Overall Contingency Plan as well as specialised contingency plans; and its ministries and commissions must establish departmental contingency plans.<sup>44</sup> Similar plans are then established at the local levels.<sup>45</sup>

(2) a unified national system on emergency incident information is to be built, consisting of such subsystems as are established by governments and their specialised agencies at different levels. All of these subsystems are to be connected with each other to form a unified national system for information sharing and cooperation, as well as for reporting.<sup>46</sup> Under this system, a reporting obligation, both by governments and individuals, horizontally and vertically, is made compulsory.<sup>47</sup>

(3) a national emergency monitoring system is to be established, which includes a data bank, a monitoring network, and specialists in charge of monitoring potential emergencies caused by natural disasters, accidents, and public health incidents.<sup>48</sup> For the purpose of public health, local centres for disease control and prevention (CDCs) at all levels are the primary units responsible for the monitoring of infectious diseases.

(4) a national warning system is established.<sup>49</sup> Under this system, early warnings at different levels may be declared, which then would trigger the application of various legal measures as well as information disclosure. For natural disasters, accidents, and public health incidents, such a warning is divided into four levels (1-4), displayed in red, orange, yellow, and blue colours respectively, with Level 1 (Red) being the highest such warning.<sup>50</sup>

**22.** As to infectious diseases, the unified national system classifies them into three classes (A, B, and C) according to the severity of the disease and places them under different management systems. The emergency laws and regulations, sometimes overlapping or conflicting with diseases control laws, establish a system on information disclosure, contingency plans, emergency responses, distribution of responsibilities among the various authorities, including specialist authorities such as local CDCs, and post emergency reconstruction.

**23.** As already mentioned above, this comprehensive and unified national legal regime was largely ignored during early responses when the strictest lockdown measures were issued. However, two sets of actions taken during the early responses relied on this legal regime. First, on 20 January 2020, the State Council made a declaration that the Class B disease of Covid-19 was to be subject to prevention and control measures designed for Class A diseases. Secondly, within a week of the lockdown of Wuhan, starting on 23 January 2020, most of the Provinces had invoked their highest level of contingency plans in accordance with the emergency response laws and regulations. However, such invocation of the contingency plans was effected without a formal declaration of epidemic areas or state of emergency, leaving the question of the legality of the lockdown measures in doubt as many of the restrictive measures may only be applicable in time of emergency.<sup>51</sup>



**24.** Most of the practical control and restrictive measures were issued by local Command Centres, which are composed of leadership of the CPC and the local governments at the corresponding levels. At the central level, there was the Central Leading Group for the Prevention and Control of Novel Coronavirus Pneumonia Epidemic (*zhongyang yingdu xinxing guanzhuang bingdu ganran feiyan yiqing gongzuo lingdao xiaozu*) ('Central Leading Group'), headed by Premier Li Keqiang, to provide unified leadership and coordinated responses. However, this Central Leading Group is not the Command Unit under the State Council as required by Article 8 the Law on Emergency Responses; rather, it is a group established by, and responsible to, the Standing Committee of the Politburo of the CPC.<sup>52</sup> Here, Chinese law was openly ignored. There is also the State Council Joint Mechanism for the Prevention and Control of Novel Coronavirus Pneumonia Epidemic ('State Council Joint Mechanism'), headed by the National Health Commission (NHC) to coordinate responses by the various ministries under the State Council, which largely serves as a coordinating authority as well as providing technical guidance to local governments.

**25.** The NHC issued two sets of Guidelines which were revised frequently: Guidelines for Treatment of the Novel Coronavirus Pneumonia, and Guidelines for the Prevention and Control of Novel Coronavirus Pneumonia.<sup>53</sup> The State Council Joint Mechanism also issued policy guidelines and general measures for local adaption and adoption, especially for Covid-19-normal practices.

**26.** As alluded to above, joint Party-Government Command Centres were established at all levels, and most lockdown orders and measures were issued by these Command Centres. The legal authority of such orders is, to say the least, ambiguous, and this potential illegality is compounded by the fact that such orders cannot be challenged in a court of law because of the involvement of the CPC.<sup>54</sup> Another source of rules was issued by the State Council Joint Mechanism. Legally speaking, their orders can be treated as administrative rules and, as such, are subject to supervision by the SCNPC and, theoretically, might be challenged in court. On the other hand, however, most orders and notices were issued as ad hoc and specific measures without any sunset clause, but they would be and indeed were constantly superseded by later orders which normally contain new measures. They were not general rules to generate further measures, although they were mostly implemented to various extents according to local conditions.

## **D. Guidance**

**27.** As mentioned above, two sets of Guidelines were issued, revised, and updated by the NHC, aimed at offering guidelines for medical institutions and authorities in charge of prevention and control of the epidemic. Both were mostly of a technical nature—this, of course, contrasts strongly with orders issued by the local Party/State command centres—being flexible for adoption and adaptation to local conditions. There have been no reports of conflict between guidelines and command centre orders, and what residents had to abide by for all practical purposes were the orders and measures issued by the local Command Centres, and the guidelines issued by the NHC aimed at providing guidance to local health authorities rather than residents.

## **III. Institutions and Oversight**

### **A. The role of legislatures in supervising the executive**

**28.** Under the Chinese Constitution and the Law on Law-making, China upholds a unified legal system under which all administrative regulations, local rules, and judicial interpretations are to be filed with and reviewed by the SCNPC. Local legislatures are similarly responsible for such reviews within their own 'jurisdictions'. However, actual mechanisms for performing such an oversight functions were only established in the last

few years at the central level. The principal work on such oversight is carried out by and delegated to the Legislative Affairs Committee of the SCNPC. The SCNPC, through its Legislative Affairs Committee, has however taken the tasks increasingly seriously, with 2020 seeing the largest number of local rules having been reviewed.<sup>55</sup>

**29.** Regulation/rule-making powers of governments at different levels are granted by the Constitution and the Law on Law-Making. As such, the legislature cannot terminate such government powers; it only has the power to supervise the exercise of these powers by governments. However, the Chinese Constitution is soft law and, theoretically, the NPC can amend the Constitution to change the rule-making powers and the Law on Law-making can be revised by the SCNPC.

**30.** Since government rule-making powers are granted by the Constitution and the Law on Law-making without any reference to periodical review, these powers are continuing. Legislative oversight concerns only the exercise of the power. As legislative affairs committees are established by Standing Committees of legislatures at all levels and these legislative affairs committees are functional departments of the legislatures, it can be said that oversight is conducted on a regular and continuing basis, with certain areas for targeted supervision.<sup>56</sup> However, legislatures at central and local levels rarely debate these matters. The most common practice is for the Standing Committee to receive an annual report by the legislative affairs committee for information and approval. While the legislature does have the power to pass resolutions supporting or opposing the exercise of government rule-making powers, this does not seem to happen as the uniform leadership of the CPC would dictate that any such conflict would have to be resolved by ‘coordination.’ In fact, under the Measures Governing Filing-for-Record and Review of Regulations, Rules and Judicial Interpretation (2019), review conclusions are delivered to the original issuing authorities for action (revision, repeal, etc).<sup>57</sup> A decision would only be made by the SCNPC if the issuing authorities take no action and ‘coordination’ fails to prompt actions by the issuing authorities. So far, there has been no such decision made by the SCNPC.

**31.** Governments have no power to extend their own rule-making powers without authorization by legislature at the same level, and any matters that fall within the domain of law-making must only be dealt with by the legislature. As mentioned in Part II.B above, many local legislatures—ie standing committees of local people’s congresses—passed resolutions to grant further powers to governments to deal with the Covid-19 emergency in 2020. To clarify the constitutionality of such practices, the Legislative Affairs Committee of the SCNPC issued an opinion, confirming that such a practice, as long as the government rules are not in conflict with laws, complies with the ‘spirit of the Law on Law-making’.<sup>58</sup>

## **B. The functioning of the legislature where its ordinary business is disrupted**

**32.** The usual annual convening of local people’s congresses is in January and, by the time of the widespread lockdown in late January 2020, local people’s congresses had all completed their annual meetings. In fact, the initial delay in response to Covid-19 in Wuhan was caused by the convening of the local people’s congresses and political consultative conferences. The annual meeting of the National People’s Congress is in March each year and, as explained in Part II above, the annual meeting was postponed, with a shortened session convened from 22 to 28 May 2020. Although Standing Committees of legislatures were supposed to continue their work as usual, lockdown measures effectively rendered it

impossible for usual meetings and, in response, online meetings were soon introduced at the various levels.

**33.** Chinese legislatures, that is, the NPC, its Standing Committee, and their local counterparts, do not conduct 'debate'. They conduct 'discussion and deliberation' at plenary sessions or group meetings. There have been very few reports about particular difficulties in meetings of standing committees. In the case of the SCNPC, it managed to convene, sometimes partially online, its usual bi-monthly meetings with a heavy legislative agenda. According to the Report of SCNPC delivered to the Fourth Session of the 13<sup>th</sup> NPC on 8 March 2021, the attendance of its meetings was maintained at 97% throughout the year.

**34.** While virtual meetings, or through a mixed format of online and physical participation, were conducted, there has been no report of any delay to the legislative agenda nor any abnormal constraint on discussions and deliberation. There are no 'opposition parties' and hence there is no such complaint on constraints.

### **C. Role of and access to courts**

**35.** For years the Chinese judicial system has invested a huge amount of financial resources in establishing and developing its internal IT and associated online systems, including the use of big data. Not surprisingly, as soon as lockdown measures were imposed, the Supreme People's Court issued its policy guidelines (Notice of the Supreme People's Court on Strengthening and Regularising On-Line Trial Work during the Novel Coronavirus Pneumonia Epidemic Prevention and Control Period) to lower courts to immediately strengthen its utilization of online facilities for civil and criminal trials, though it also emphasised that online trials shall not be compulsory and litigation shall be suspended if either party opposes the use of an online trial.<sup>59</sup>

**36.** The Supreme People's Court Notice applies to both civil and criminal proceedings, though it seems that the emphasis was on civil ones. Such an emphasis makes sense. During the lockdown period it was much harder to gather and verify evidence for criminal proceedings and, hence, the utility of online trials for criminal cases is limited.

**37.** There were reports of difficulties caused to some litigants and reluctance among some litigants to use online trials.<sup>60</sup> There is, however, no clear evidence to support the systemic existence of a digital divide, as the use of online trials is not compulsory. Further, there are reports that local courts have made efforts to provide technical support, guidance, and other measures to assist parties in the use of the technologies.<sup>61</sup> Having said this, it is necessary to acknowledge the hugely different levels of technological development and resources available to courts in the developed eastern part of China and those in western China, and between courts in cities and court tribunals in rural China.

**38.** Obviously, litigants see the traditional, face-to-face proceedings as a risk to health, not the online trial. Also importantly, Chinese courts were never shut down completely, though the general lockdown measures did temporarily restrict access to them. Indeed, according to Chinese media reports, the quick move to online proceedings, which include case filing, mediation, evidence exchange, court hearings, sentencing/judgement, and document delivery, significantly facilitated access to justice.<sup>62</sup>

**39.** While on-line proceedings were encouraged and the courts were required to facilitate the use of them, Article 3 of the Notice of the Supreme People's Court on Strengthening and Regularising On-Line Trial Work during the Novel Coronavirus Pneumonia Epidemic

Prevention and Control Period specifically stipulates that all conduct must comply with existing laws and judicial interpretations.

**40.** As discussed in Part II.A above, no declarations of states emergency, states of exception, or public health emergencies were officially made by Chinese authorities. Even if such declarations were made, Chinese courts do not have a review power over generally applicable rules and orders, with the exception of a few kinds of documents; they can only review government actions concerning a particular person or a particular group of persons. Media outside China has reported several cases of Wuhan citizens wanting to sue their government, but they and their lawyers have all been silenced by the governments.<sup>63</sup> Indeed, the 2021 Work Report of the Supreme People's Court stated that the Court made some efforts to neutralise 'vexatious and malicious litigation' in and outside China,<sup>64</sup> but it provides no details. In short, there has been no report of cases involving review by court of government actions or government rules or orders in relation to the handling of Covid-19.

## **D. Elections**

**41.** China does not conduct referendums, and direct elections are only conducted at the county and township levels every five years. The election year is 2021 and direct local elections have been conducted throughout the year with the exact election time decided locally in accordance local pandemic situation.

## **E. Scientific Advice**

**42.** As explained in Part II.B above, the national legal framework on public health and emergency responses does establish, for operational purposes, four unified national systems on prevention and control of infectious diseases and responses to emergencies. Under these uniform systems, the authorities in charge of prevention and control of diseases (CDCs) are required to collect, analyse, and report information on infectious diseases and to forecast the outbreak and epidemic trend of infectious diseases. The same authorities are also charged with the task of conducting laboratory testing as well as making diagnoses and etiological appraisals.<sup>65</sup> In other words, the CDCs in China at different levels are to provide scientific advice. However, the CDCs in China are government organizations subject to the leadership of health authorities, that is, Health Commissions of governments at different levels. They report to governments, which in turn decide what to report to the public. Though not strictly a matter of scientific advice, it should be pointed out that, under law, CDCs, medical institutions, and blood supply organizations are all required to report an epidemic situation or outbreak of infectious disease to a relevant authority.<sup>66</sup> In fact, every unit or individual is under a legal obligation to report to the nearest authority on prevention and control of infectious diseases or a medical institution if an infectious disease patient or suspected case is found.<sup>67</sup> All such reports must be made promptly or within time limits specified by regulations.

**43.** There is no law requiring the publication of the advice of CDC, nor any legal provision compelling the government to follow any scientific advice. Information on the outbreak and prevalence of an epidemic is to be issued to the general public by the NHC under the State Council or provincial Health Commissions authorised by the NHC.<sup>68</sup> There is no law requiring the scientific advisers to be independent and there are no published materials relating to either the minutes of meetings or the process of appointment, on which it can be determined whether scientific advisers are genuinely independent of government.

## **F. Freedom of the press and freedom of information**

**44.** The Chinese media is always tightly controlled, and it has been particularly so in relation to the ongoing prevention and control of Covid-19. Specifically, not only does the government control what the media might be allowed to report on Covid-19, but the criminal law and other laws on ‘social order and administration’ have been applied and continue to be applied to punish persons who report on Covid-19 information without government authorization.<sup>69</sup> The Work Report of the Supreme People’s Court, as mentioned in Part III.C above, stated that the Court concluded 5,474 criminal cases (involving 6,443 persons) related to Covid-19 prevention and control, including spreading false information and rumours about Covid-19.<sup>70</sup> However, no details were provided by the Court.

**45.** As mentioned in Part II.B above, there is the Regulation on Open Government Information, which imposes an obligation on, among others, governments to issue information that might affect public health.<sup>71</sup> Since no declaration on emergency was ever issued, it can be assumed that this law continues to operate, but there has been no report of any application for information under the Regulation.

## **G. Ombuds and oversight bodies**

**46.** China does not have an ombudsperson system, nor does it recognise the theory and practice of separation of powers. As explained in Part III.A above, legislatures do have some supervisory powers over the executives. As also explained Part III.C above, Chinese courts can review specific actions of governments that impact on particular persons or particular groups of persons; but courts have no power to review general rules issued by the executives—with some very limited exceptions in relation to certain types of documents issued by governments. There has been no special public office appointed to monitor the public responses to Covid-19.

**47.** As mentioned in Part III.A above, a special review of provincial rules on responses to Covid-19 was conducted in 2020 by the Legislative Affairs Committee. Upon completion of the Review, the Committee issued an advisory notice, affirming the power of the local legislatures to grant local governments powers to issue measures to combat Covid-19.

**48.** Another form of supervision is conducted by way of making submissions (suggestions and opinions) by deputies to people’s congresses at different levels. These submissions are then forwarded to relevant government departments for feedback or action. According to the NHC, it alone was asked to deal with some 467 submissions on topics relating to Covid-19.<sup>72</sup> However, these submissions are not made public, though sometimes very brief overview reports are published. In the report, it was stated that some of the suggestions were taken up by the NHC.<sup>73</sup>

## **IV. Public Health Measures, Enforcement and Compliance**

**49.** As of March 2021, China has had an initial mass outbreak of Covid-19 in Hubei Province, centred around Wuhan City, and then isolated cases in various cities in China, with small-scale outbreaks in Northern China in November 2020 through to February 2021. The initial responses to the outbreak in Wuhan, and Hubei more generally, include, probably, some of the strictest measures ever undertaken by any country in response to an epidemic.<sup>74</sup> Although outbreaks in Northern China in late 2020 and early 2021 were ‘minor’ in comparison with the initial outbreak, many of the toughest measures (eg closing-off residential blocks or whole districts of a city) were adopted by some cities that saw small outbreaks. Further, as in the initial responses, these ‘second wave’ responses were once again local and ad hoc in nature, mostly issued as notices or orders by local command

centres. As in the initial responses, these centres are joint authorities of the CPC and local government.

**50.** While responses are local and ad hoc in nature, it should also be pointed out that the CPC did establish a Central Leading Group (see Part II.B above), chaired by the Premier Li Keqiang in his capacity as a member of the Standing Committee of the Politburo of the CPC. Where the epidemic situation is serious, representatives of the Central Leading Group were sent to the specific localities, such as Wuhan. Further, as also mentioned in Part II. B above, the State Council established a Joint Mechanism, headed by the NHC, as a coordinate authority which also provides technical guidance to local governments. Finally, the NHC also sent expert groups to localities where the epidemic situation was serious. Through these mechanisms, important local responses gained their approval from the central authority of the CPC.

**51.** In the ‘second wave’ starting from November 2020, differences in approaches to the control of the epidemic between localities were much sharper. Thus, in Shanghai for instance, restrictions were imposed in small-scale targeted areas and the protection of privacy was taken into consideration in contact tracing practice, whereas in many cities in Northern China, restrictions were strict and often personal information was published in the contact tracing process. Further, some much more flexible measures issued by the central authority, such as the State Council Joint Mechanism, were implemented alongside much stricter measures at the local levels, leading to the so-called phenomenon of stricter measures at lower levels without any scientific support. Also at the local level, the phrase ‘war time’ was often used without any legal basis.<sup>75</sup> These problems were initially discussed on social media, but have, since mid-January 2021, attracted the attention of the government media and government authorities.<sup>76</sup> Although the practice of imposing stricter measures by local authorities was criticised by the State Council in February 2021 as ‘lazy policies and a waste of resources’,<sup>77</sup> any government measures to rectify the problems in actual practice are yet to be seen.

**52.** The following focuses (but not exclusively) on the measures in response to the outbreak in Wuhan, Hubei in the ‘first wave’ of the Covid-19 epidemic in China. These measures set out the benchmarks that were followed, to a varied extent and scale, by cities where small scale outbreaks occurred, mostly from November 2020 to February 2021.

## **A. Public health measures**

### **1. Individual mobility restrictions on citizens (stay-at-home, curfews, etc)**

**53.** On 23 January 2020, the Wuhan Command Centre on the Prevention and Control of the Novel Coronavirus Pneumonia Epidemic (‘Wuhan Command Centre’) issued its Public Notice No 1,<sup>78</sup> which shut down all public transport including outbound trains and flights, effectively cutting off Wuhan from the rest of China. In two days, 23 and 24 January 2020, seven notices were issued by the Wuhan Command Centre.<sup>79</sup> This is what is commonly referred to as the lockdown of the entire city of Wuhan, and restriction measures then began to be introduced through Public Notices/Orders issued by the various local Command Centres, initially in Wuhan but soon followed by many other cities in Hubei Province and nationwide.

**54.** The initial public notices were unclear whether restrictions on mobility of residents had been imposed, but it was clear that shopping and visiting hospitals was permitted. At the same time, some residential/neighbourhood committees—referred to as the ‘communities’ (*shequ*) in public notices and orders—began to impose their own restrictions on movement by imposing strict access to and exit from their residential blocks. On 10 February 2020—in fact, 11 February as the notice was issued after midnight—Public Notice 12 was issued by the Wuhan Command Centre.<sup>80</sup> This Notice imposed an immediate

but undefined closing-off of all residential blocks in Wuhan and ordered those who were diagnosed with, or who were suspected of having been infected by, Covid-19 to stay inside their apartments. Two days later, the Wuhan Command Centre issued another notice,<sup>81</sup> elaborating the meaning of 'close-off management' (*fengbi shi guanli*). According to the Notice, only one entry/exit point, which must be staffed with inspection personnel at all hours, was allowed for each residential block and the actual implementation of such measures were to be undertaken by district governments.<sup>82</sup> In actual practice, this effectively locked up some 11 million residents in their own apartments. This order did not specify a period of application. It was not until 20 March 2020 that strict restrictions were partially relaxed for residential blocks or local communities where there had been no infection cases.<sup>83</sup>

**55.** The so-called 'close-off management' was in fact imposed in many cities in China, well beyond Hubei Province but with varied restrictions. Some had a whole city or a district of a city closed off, others imposed strict restrictions targeting specific residential blocks. Some lasted for a few days, others—like in some parts of Wuhan—lasted for more than two months (more precisely 76 days, between 23 January–8 April 2020). Even in the case of a total closing-off of residential blocks, some allowed one or two residents per apartment to go out for shopping every other day, others simply did not allow anyone to leave their apartments at all and daily necessities were then delivered by government organised volunteers.<sup>84</sup>

## **2. Restrictions on international and internal travel**

**56.** Wuhan Public Notice No 1 shut down all public transport including all outbound trains and flights, but it did not mention taxi nor private vehicles, nor anything about movement of residents within the city at all.<sup>85</sup> As a result, limited movement of residents was still possible. In fact, Public Notice No 8, issued on 24 January 2020, advised that the government had acquired 6,000 taxis that would be distributed to residential/neighbourhood committees for free use by residents.<sup>86</sup> However, on 25 January 2020, Public Notice No 9 prohibited the use of vehicles in the city, with the exception granted to supply vehicles, free taxis acquired by government and assigned to local communities, and government vehicles.<sup>87</sup> In other words, by this point, both international and internal travel were banned in the city of Wuhan and, in fact, for the Hubei Province as a whole.

**57.** Nationally, initial efforts were made by the Chinese Ministry of Transport to facilitate the refund of tickets already bought, as the lockdown of cities had made most internal travel impossible or undesirable. This was especially so after most people had already arrived home for the Chinese lunar new year, starting from 25 January 2020. Then, the cancellation of trains began in response to the lockdowns in various cities in China.<sup>88</sup> Meanwhile, many local authorities had begun blocking exits of freeways/highways, making the use of freeway/highways practically impossible.

**58.** As to international travel more generally, China initially opposed the imposition of international travel bans by other countries, a position that was also taken by the WHO. This is understandable as such bans mostly targeted China as the outbound country or destination at the time. Starting from this position, China then took an approach that gradually increased its restrictions. First, it re-activated its Border Health Declaration practice on 25 January 2020.<sup>89</sup> Then, the General Administration of Civil Aviation began to impose controls on the total volume of international flights, demanding that there would only be a reduction and no increase of international flights.<sup>90</sup> Still later, on 28 March 2020, China finally banned the entry of all foreigners, including transition passengers, with the exceptions of diplomats or passengers on grounds of emergency or humanitarian reasons.<sup>91</sup> On the same day, the General Administration of Civil Aviation also announced that only one route was allowed for each country and there must be only one flight for each route per

week.<sup>92</sup> This restriction continued until 8 June 2020 when some minor adjustments were made. Thereafter, restrictions became more targeted and strict quarantine and Covid-19 test requirements were imposed. As in other countries, at the time of writing (March 2021), international travel is far from being restored to the pre-Covid-19 status, but limited travel—mainly for returning residents—with strict control measures is now permitted.

**59.** The latest policy on international travel was announced by the Minister of Foreign Affairs on 7 March 2021. Under the new policy, which became effective on 15 March 2021, (1) foreign nationals and their family members can now apply for a visa to China with the documents that were required before Covid-19; (2) the scope for emergency and humanitarian visas will be expanded; and (3) an APEC (Asia-Pacific Economic Cooperation) business travel card holder may apply for an M visa by presenting their valid APEC card and an invitation letter from China.<sup>93</sup> However, this policy—referred to as ‘visa facilitation’—would only apply to applicants who have been inoculated with Covid-19 vaccines produced in China, and the Notice on Airline Boarding Requirements for Certificates of Negative Nucleic Acid and Anti-Body Blood Tests Results issued in late 2020 continues to apply.<sup>94</sup> Since Chinese vaccines are only approved for use in very limited countries, the real effect of this policy is negligible as far as international travel to China is concerned.

### **3. *Limitations on public and private gatherings and events***

**60.** The responses to the initial outbreak in Wuhan, and Hubei Province more generally, can be described as swinging from one extreme to the other, with strict measures becoming the norm ever since the imposition of lockdown in Hubei.

**61.** As already mentioned in the Introduction, the first cases were detected in Wuhan in November/December 2019. However, no action was taken by governments. Instead, large scale events went ahead, including the annual meetings of local people’s congresses, local political consultative conferences, and lunar new year events. Many critiques have suggested that the cover-up of inaction by governments, mostly for political reasons such as the convening of the local people’s congress and the political consultative conference, constituted the most serious error in the early response to Covid-19 in China.<sup>95</sup>

**62.** When the Wuhan and Hubei governments responded, the principal measures implemented were the city-wide lockdowns. As such, no public or private gatherings were possible nor any public events. When isolated cases began to emerge in late 2020 and early 2021 in Northern China, many local governments responded with similar lockdown measures, which effectively made public and private gatherings and events impossible.

**63.** Central government directives are, however, much more flexible, less strict, and general in nature. For instance, the Notice on Epidemic Prevention and Control during New Year and Lunar New Year Period suggested the reduction of gatherings and one-metre distancing between persons, as well as proposing a limit of 10 persons for private gatherings.<sup>96</sup> As to public events, events with large participation, such as marathons, profit-seeking entertainment performances, exhibitions, and religious ceremonies, should be subject to a strict approval process, and epidemic prevention and control measures had to be established for any events attended by more than 50 people. It further suggested that all public venues, such as cinemas, tourist spots, entertainment venues, etc, should be limited to 75% of their capacity. Typical of the measures issued by the Central government authority, the Notice basically delegates the responsibilities for prevention, control, approval (of events and activities) and management to local governments. As discussed in



Part IV.A.1 above, local governments tended to impose much more restrictive measures than those being recommended in the early months of 2020.

#### **4. Closure of premises and facilities (eg schools, shops, services, parks, churches, sport facilities)**

**64.** Chinese law clearly allows the closure of premises and facilities in times of epidemic or natural disasters.<sup>97</sup> Once again, the actual practice varied from place to place.

**65.** As a general rule, when a city or a district thereof is locked down, these public premises and facilities were all closed. Thus, a Public Notice of Hubei Provincial Government,<sup>98</sup> for instance, ordered all non-essential public venues in the Province to close, even though these venues had already been closed down as part of the lockdown efforts. Public venues such as shopping malls, hotels, etc, were only reopened gradually with strict conditions from April 2020.<sup>99</sup> These conditions relate to air circulation/ventilation, mechanisms for prevention and control, control of crowd density, inspection of electronic health cards, use of face masks and social distancing, hygiene practices, etc.

**66.** Often, cinemas, restaurants, and bars (including karaoke bars), sport facilities, etc, are singled out for stricter rules as they are often established in closed environments, such as within shopping malls, and they themselves are a closed environment. However, religious venues are not singled out in this way—they are treated as general public venues and are regulated as such.

#### **5. Physical distancing**

**67.** Physical and social distancing is regulated by guidelines issued by central government authorities and reasonably uniformly implemented at local levels. While other measures, especially lockdown measures, are often strictly enforced, Chinese authorities seem to be rather relaxed towards physical and social distancing rules.

**68.** Initially, the guidelines required people to keep a ‘certain’ distance from each other if practically possible.<sup>100</sup> The ‘certain distance’ eventually became a standard ‘one-metre’ distance in most centrally and locally issued public notices.<sup>101</sup>

#### **6. Use of face coverings and personal protective equipment (PPE)**

**69.** China was one of the first countries to use face coverings, and most of the Chinese people believe in the efficacy of face coverings in the prevention and control of Covid-19.<sup>102</sup> In practice, ‘face masks’ (*kou zhao*) is the standard term used, and most Chinese people use the disposable face masks and one rarely sees any other face covering than face masks. As a matter of government policy, face coverings were first recommended for people in public places with a relative high density.<sup>103</sup> More standard recommendations were issued by the State Council Joint Mechanism in early February 2020.<sup>104</sup> Eventually, the language in Chinese policy became ambiguous; many policies simply refer to the wearing of face masks without saying whether it is compulsory or only recommended.<sup>105</sup>

**70.** Compulsory or not under the national policies, most of the local directives or practice simply made such wearing compulsory during the outbreaks of Covid-19, and as a practice, many Chinese people have continued to wear face masks.

**71.** As in many other countries, the use of PPE for medical and health professionals was severely impacted by the shortage of such equipment during the initial outbreak of the epidemic.<sup>106</sup> This was so despite the fact that the supply of appropriate PPE for medical and

health professionals is mandated by law,<sup>107</sup> and local governments are required to stockpile such equipment for emergency use.<sup>108</sup>

## **7. Isolation of infected individuals and quarantine of individuals suspected of infection**

**72.** Chinese law clearly allows isolation and quarantine as measures for the control of Class A infectious diseases,<sup>109</sup> and, as mentioned Part II.C above, Covid-19 was declared a Class A infectious disease. While Chinese law only uses one term '*Geli Zhiliao*' (isolated for treatment), the Law on Prevention and Treatment of Infectious Diseases clearly treats ill or infected persons differently from persons suspected of being infected or virus carriers,<sup>110</sup> in line with the definitions of 'isolation' and 'quarantine' in the International Health Regulations 2005.<sup>111</sup> Such measures are to be implemented by governments at the county level, but such measures must also be reported to a government at a higher level for approval.<sup>112</sup> While the measures are to be implemented by medical institutions, local police are required to assist if there is any failure in compliance by patients or persons suspected of being infected.<sup>113</sup>

**73.** Initially, the outbreak clearly caught Wuhan, and Hubei Province in general, medical institutions off-guard and the hospitals were unable and unprepared to respond adequately to the flood of patients and suspected infection cases (suspected persons).<sup>114</sup> The total lockdown of the city, and the whole province, bought time for the authorities to build temporary 'hospitals' for both the ill and persons suspected of being infected for isolated treatment. Indeed, as soon as the lockdown order was issued on 23 January 2020, construction of the first such temporary 'hospital' began on 24 January 2020, and construction of the second temporary 'hospital' began two days later. Both of these temporary hospitals were commissioned for use in early February 2020.<sup>115</sup>

**74.** On 31 January 2020, the NHC formally recommended to Hubei Province measures isolating patients at designated treatment facilities.<sup>116</sup> Starting on 2 February 2020, Wuhan began to implement separate isolation for four types of people: (1) patients diagnosed with Covid-19, (2) persons suspected of being infected with Covid-19, (3) persons with a fever, and (4) close contacts of infected persons,<sup>117</sup> and for all practical purposes, these people were all isolated for treatment or observation, and all patients with mild symptoms were placed into designated medical facilities for early medical intervention.<sup>118</sup>

**75.** From mid-February 2020, China began to prepare for the resumption of production, work, and other economic activities after widespread nationwide lockdown. Thus, a set of guidelines on precise policies in accordance with risk classification were issued by the State Council Joint Mechanism.<sup>119</sup> These guidelines were then further expanded by the same authority when it issued its Notice on the Prevention and Control of Novel Coronavirus Pneumonia Epidemic with Scientific Precision, which provides separate Plans for different industries and professions for 'precise' implementation.<sup>120</sup> Under the Guidelines and the Notice, Provincial governments are required to designate areas under their jurisdiction as 'High Risk', 'Medium Risk', and 'Low Risk'. Residents are then classified accordingly, taking into consideration their living and travel history, history of close contact with patients or suspected persons, and their own health circumstances. 'High Risk' residents are then either quarantined or isolated for treatment; 'Medium Risk' residents are subject to home isolation; and only 'Low Risk' residents with a normal temperature are allowed to travel and work. The standard period for quarantine is set at 14 days.

**76.** In July 2020, a further Notice was issued by the State Council Joint Mechanism.<sup>121</sup> This Notice allows local governments to extend the quarantine period for overseas arrivals, and some cities then implemented a ‘14+7’ days policy for overseas arrivals.<sup>122</sup>

### **8. Testing, treatment, and vaccination**

**77.** China took some early measures to ensure the supply of testing kits by authorising four companies to produce and supply new testing kits on 26 January 2020, which significantly expanded testing capacity.<sup>123</sup> Thus, for instance, in Hubei Province the daily testing capacity expanded from 300 samples in the early stages of the epidemic to more than 50,000 in mid-April.<sup>124</sup> This capacity building continued, with specific targets set nationwide.<sup>125</sup> By February 2021, China was able to demand that, if total testing—that is, everyone is tested—is required, for a city with a population of 5 million or less, such testing must be completed in two days, and for a city with a population over 5 million, such testing must be completed between 3–5 days.<sup>126</sup> This soon allowed the Chinese government to implement the so-called ‘four-should’ policy: those who should be tested are tested; those who should be isolated are isolated; those who should be hospitalised are hospitalised; and those who should be treated are treated.<sup>127</sup>

**78.** The phrase ‘those who should be tested’ was clarified in June 2020 to mean the following people: close contacts of infected persons, overseas arrivals, people visiting clinics with a fever, all newly hospitalised persons and their family carers, medical staff, quarantine and border inspection staff, staff of prisons and detention centres, and staff working in social welfare and age care institutions.<sup>128</sup> Where an epidemic situation was serious, the policy of ‘those who should be tested are tested’ simply means compulsory testing.<sup>129</sup> Thus, in Wuhan for instance, the test was city-wide for everyone.<sup>130</sup> However, compulsory testing seemed to have been implemented by many local governments whenever isolated cases were discovered. Although the central government policy seems to suggest that, for ‘those who should be tested’, testing would be free,<sup>131</sup> local practice did not seem to follow the policy and, in most places, testing is not free. The test cost varies from city to city—with some cities providing free tests—with 30 yuan per test being the most common price.<sup>132</sup> Because of this, social media suggests that many residents living in low-risk areas with isolated cases were resentful of testing requirements.

**79.** As to treatment, Chinese law grants significant powers to medical institutions to undertake both isolation and any treatment deemed necessary for the prevention and control of Class A diseases, with police being required to assist the institutions should there be any failure to comply with medical instructions.<sup>133</sup>

**80.** As a matter of practice and in line with China’s hard-line approach to prevention and control of Covid-19, early medical intervention was mandated for people with mild symptoms, so as to reduce the risk that their condition might worsen. For this purpose, a series of national guidelines on the subject were issued after the lockdown of Hubei Province to stop the fast spread of the virus.<sup>134</sup> In actual practice, as explained Part IV.A.7 above, China simply placed all patients with mild symptoms into designated medical facilities for early medical intervention.

**81.** In public health emergencies, health authorities at the county level or above are required by law to administer preventive measures including emergency vaccination to vulnerable groups of the population.<sup>135</sup> At the time of writing in March 2021, a vaccination program had started in China, with a total of five different vaccines (all Chinese made) having already been approved for emergency use by the Chinese government. So far

vaccination is largely based on voluntary participation, perhaps partly due to the limited supply of the vaccine at the moment.

**82.** More specifically, China has developed a two-step vaccination plan: vaccines will first be given to key groups on the basis of informed consent,<sup>136</sup> including, according to the State Council, ‘those engaged in handling imported cold-chain products and people working in exposed sectors. These include port inspection and quarantine, aviation, public transport, fresh (wet) market, medical treatment, and disease control ... The vaccination program will also cover those who plan to work or study in countries and regions with medium or high risks of exposure to the virus ... Next, with COVID-19 vaccines officially approved to enter the market or the yield of vaccines improving steadily, China will put more vaccines into use, inoculating the eligible population as widely as possible’.<sup>137</sup>

**83.** The Chinese government has now confirmed that it will offer free Covid-19 vaccinations to the whole population. For vaccination of key groups that started on 15 December 2020, Chinese media reports suggested that the ‘cost of COVID-19 vaccination, including both vaccines’ expenses and inoculation fees, will be covered by medical insurance fund and government finance, rather than individuals’.<sup>138</sup> Moreover, ‘[a]fter the vaccines are approved and available to the general public, they will be offered free to the Chinese people, who can receive inoculation on an informed consent basis.’<sup>139</sup>

## **9. Contact tracing procedures**

**84.** China began to encourage the nationwide use of a health QR code system—or a paper-based health pass system where an electronic version is not yet available—from as early as February 2020, when the Notice on the Prevention and Control of Novel Coronavirus Pneumonia Epidemic with Scientific Precision was issued on 24 February 2020.<sup>140</sup> This QR Code, showing the health situation, travel history, vaccination status, and other personal information of the holder, is required for inter-city travel and for entering many public venues such as shopping centres and shops. Early studies suggest that the health QR code has helped control the spread of Covid-19 in China.<sup>141</sup> Early adoption of the QR code system by local governments soon led to different versions of the code, containing different data and information, being used in different places.<sup>142</sup> Major efforts began to emerge in the form of policy documents issued by the State Council authorities to ensure that a uniform version would be followed by all local governments that would also be accepted nationwide under the policy of ‘uniform policy, uniform standards, mutual recognition and one code for all travel purpose’.<sup>143</sup>

**85.** Although participation is not made compulsory for all residents—for instance, the elderly are specifically mentioned as a group of people who might need to retain the old paper-based system—the health QR code system is connected to many other systems such as hospitals and travel controls across the country.<sup>144</sup> As a result, it is effectively compulsory for everyone. As to Chinese citizens returning to China, participation is mandatory. They are required to enter their personal information, health status, recent travel history, and other information on a daily basis in advance via the specifically designed international version of the health QR code.<sup>145</sup>

**86.** The health QR code has raised concerns about privacy as it relies on ‘troves of data the authorities have collected from individuals—including their personal information, location, travel history, recent contacts and health status.’<sup>146</sup> Many worried that their personal information may be leaked, and their information security cannot be ensured,<sup>147</sup> and this is despite the requirement by national guidelines that explicitly requires local governments to

standardise the use of personal information collected by the health QR code, strengthen data security management, and protect personal privacy.<sup>148</sup>

### **10. Measures in long-term care facilities or homes for the elderly, restrictions on visitors etc.**

**87.** The elderly seem to be the only group being singled out for care in the fight against the Covid-19 epidemic. This is in line with Chinese tradition that treats the elderly with care and respect. Indeed, as early as 28 January 2020, a special Notice was issued to address special care required for the elderly,<sup>149</sup> which was followed by some local implementation measures.<sup>150</sup>

**88.** Although the elderly are singled out for care, there were only very limited measures that were applied specifically to the elderly. Specifically, emphasis was on close surveillance of the elderly, especially those living alone, information collection on their health, and the need for isolation and treatment should they fall sick. New admission to elderly care facilities was banned, and so was visitation to these facilities. The aforementioned State Council Notice also required local governments to introduce appropriate measures in accordance with their local epidemic circumstances.<sup>151</sup>

## **B. Enforcement and Compliance**

### **1. Enforcement**

**89.** As mentioned in Part II.B above, the Chinese legal framework on infectious disease control and public health emergency was comprehensively improved, strengthened, and expanded after the SARS epidemic of 2002/2003, the H1N1 flu epidemic in 2009, and the H7N9 avian flu epidemic in 2013. Under this legal system, responsibilities were assigned to different authorities and institutions in cases of emergency. As explained in Part II.C above, four unified national systems on prevention and control of infectious diseases and responses to emergencies are prescribed by law and have all been established. These include a unified national system of contingency plans, a unified national system on emergency incident information, a national emergency monitoring system, and a national warning system. Once an emergency has occurred, a range of measures might be taken by governments responsible for emergency responses, including designation of controlled areas, traffic control, and other control measures appropriate to the level of emergency.<sup>152</sup> These measures are designed to contain and, ultimately, eliminate the emergency, to protect human life and property, and to maintain social order. Importantly, governments are required to publish, in a uniform, accurate, and prompt manner, information on the development and handling of the emergency.<sup>153</sup>

**90.** The above comprehensive system was established before Xi Jinping came to power. As discussed in Part I above, China under Xi is a Party-State country in which the CPC assumes direct control over all aspects of social life—a situation that is fundamentally different from what is formally envisioned by Chinese law. Not surprisingly, from decision-making to enforcement and compliance, the actual practice differs significantly from Chinese law.<sup>154</sup>

**91.** As already explained, decisions were made by a Central CPC Leading Group and local command centres, and the latter are joint Party-Government authorities. At the national level, the NHC is mostly left with a role to issue information, expert advice, and guidelines. At the local levels and during emergencies, such public health authorities were largely invisible other than providing basic information about the epidemic—the local command centres coordinate all responses.

**92.** In the early stage of the outbreak in Wuhan, the capital city of Hubei Province, and under the highly centralised Party-State system, local governments (both Wuhan City and the Hubei Provincial governments) were clearly unable to act and/or unsure of what to do; they were not even able to issue epidemic information to the public.<sup>155</sup> However, once the city was locked down, local governments—especially district governments and residential/neighborhood/village committees—were mobilized to enforce the lockdown measures. This of course raised many questions of governance legitimacy and legality in the early days of the outbreak.<sup>156</sup>

**93.** There is no doubt that the Chinese police force is an extremely powerful organization with extensive powers, in normal times or in emergencies. It also has a clear mandate to enforce lockdown, isolation, and quarantine measures.<sup>157</sup> In actual practice, however, the Chinese police have turned out to be much less visible than otherwise anticipated. It seems that the police ‘did not act as the sole or the dominant role in the above-mentioned measures ... The main tasks for the police officers have been settling conflicts when citizens refuse to obey various quarantine rules or accept medical treatments.’<sup>158</sup> As such, they ‘have limited involvement in enforcing mandatory quarantine. Their use of force is rigidly reserved as the last resort’.<sup>159</sup>

**94.** It is however wrong to assume that the police are in any way absent. They are, of course, still the principal force enforcing mandatory measures, including mask wearing and the cancellation of private gatherings. In this, they exercise general powers to impose administrative penalties as well as specific powers under relevant laws in times of emergency.<sup>160</sup>

**95.** The Chinese military was called up during the initial lockdown in Hubei Province. However, it was called upon to assist testing and medical treatment of patients, transportation of materials and supplies, and construction of temporary treatment or isolation centres/facilities. The military was also heavily involved in the development of test kits and vaccines.<sup>161</sup> The military was not, however, involved in the maintenance of social order.

**96.** While most public notices on restrictions did not mention sanctions on violation, Chinese laws have always imposed civil sanctions, such as fines, for violation of social order. For instance, Article 50 of the Law on Administrative Penalties for Social Order Administration imposed a fine of 500 yuan, in addition to detention of between 5-10 days, in cases of refusing to comply with government orders or decisions issued in times of emergency.<sup>162</sup>

**97.** Criminal sanctions are always available under the Chinese law and are often preferred to civil sanctions in the administration of social order, and criminal prosecution was undertaken by local procuratorates. However, the most prevailing practice is the use of administrative penalties, which include administrative detention. Indeed, law enforcement agencies (police, procuratorates, and courts) are encouraged to apply all available civil, administrative, and criminal sanctions for violation of laws, orders, and decisions issued to address the Covid-19 emergencies.<sup>163</sup>

## **2. Compliance**

**98.** China is a highly controlled authoritarian society and, by definition, it is expected that the rate of compliance would be very high. The real question is whether such compliance is voluntary or coerced. A survey conducted jointly by several research institutions from China

and Hong Kong suggests that some 80% of residents complied with the various restrictions voluntarily.<sup>164</sup>

**99.** As to the wearing of face masks and other hygiene practices, there has been little doubt that the Chinese people have a very high rate of compliance, even when these practices are no longer compulsory.<sup>165</sup> A survey of 28,000 people in the age bracket of 16–74 years old in 15 countries shows that 83% of Chinese people had worn a face mask because of the Covid-19 pandemic.<sup>166</sup>

Zhiqiong June Wang (PhD) Associate Professor, School of Law, Western Sydney University  
Jianfu Chen (PhD) Honorary Professorial Fellow, School of Law, the University of Melbourne

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### **Footnotes:**

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<sup>5</sup> State Council Information Office, *Fighting Covid-19: China in Action* (7 June 2020) (hereinafter '*China Covid-19 White Paper*'). This White Paper was issued in Chinese but was translated into English and other languages. However, the official English translation is very inaccurate and unreliable and, for all practical purposes unusable. For this reason, this Report only uses the Chinese version as the original source of policies and practice.

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<sup>8</sup> Chinese Constitution (1982), Preamble.

<sup>9</sup> A Gu, *The Construction of a Socialist Legal System and Legislative Work (Shehui Zhuyi Fazhi Jianshe He Lifa Gongzuo)* (Beijing: China University of Political Science and Law Press 1989) 50.

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- 47** Law on Emergency Responses 2007, arts 39, 40.
- 48** Law on Emergency Responses 2007, art 41.
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- 159** F Jiang and C Xie, 'Roles of Chinese Police Amidst the COVID-19 Pandemic' (2020) 14 Policing: A Journal of Policy and Practice 1127, state that '[t]here were a variety of governmental, commercial, and social forces participating in enforcing the quarantine, including neighbourhood resident committee (NRC) staff (with governmental characters), the grid-workers (*Wangge Yuan*, frontline agents hired by the NRCs), private security personnel (*Bao'an*, hired by the property management organizations), organised volunteers, and community police officers'.
- 160** These laws include the Law of the PRC on Administrative Penalties for Social Order Administration, the Law on Emergency Responses 2007; Opinions on Penalising Violation of Law and Criminal Actions in the Prevention and Control of the Novel Coronavirus Pneumonia Epidemic (Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security and Ministry of Justice) (6 February 2020).
- 161** See 'The Functions Played by the Chinese Military in the Fight against the Novel Coronavirus Pneumonia Epidemic' Sina News (Online, 31 March 2020); D Lewis, 'China's coronavirus vaccine shows military's growing role in medical research', Nature (11 September 2020).
- 162** Law on Administrative Penalties for Social Order Administration (28 August 2005, revised 26 October 2012).



**163** See Opinions on Penalising Violation of Law and Criminal Actions in the Prevention and Control of the Novel Coronavirus Pneumonia Epidemic (Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security and Ministry of Justice) (6 February 2020).

**164** See eHealth Research Institute of the School of Management (Harbin Institute of Technology), Research Institute of Big Data and Commercial Intelligence (East China University of Science and Technology), and School of Business (Hong Kong Baptist University) 'Survey Report on Public Participation in the Prevention and Control of the Novel Coronavirus Pneumonia' (5 May 2020).

**165** See 'Beijing says residents can go mask-free as China COVID cases hit new lows' Reuters (Online, 21 August 2020).

**166** See K Buchholz, 'Asians Still Most Likely to Wear Face Masks Due to COVID-19', Statista (21 April 2020).