

# Globalisation, Rights and Issues in Education Law in Singapore

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## Globalisation and Singapore

Over the last two decades, there has been a proliferation of academic articles on globalisation. One author, who has written extensively on this issue, is Hallak (2000: 22) who refers to globalisation as the ‘combination of the free exchange of goods, services and capital’. Watson (2000), though, prefers to term globalisation as the world primary operational unit of business – for example, transnational corporations operating in many countries under different brand names or producing components in different countries, and then assembling the finished product in another country. Ghai (1999), however, views globalisation differently. He sees it as an economic platform for transnational and large national corporations to create conditions in which rights become hard to exercise or protect. He gives the example of large publishing and television companies having the prerogative to decide, for profit reasons, which books to publish or programmes to screen. Arguably, this violates the rights of private individuals or groups, in that they are discriminated against or not given equal opportunities. Thus, globalisation moves from being a simple exchange mechanism to one with ideological, ethical or moral dimensions.

There are other aspects of globalisation. They include the ‘emergence of environmental and conservation consciousness, and the new cross-border roles of non-governmental organisations, like Amnesty International, Greenpeace and the World Wildlife Fund’ (Gopinathan, 2001: 3). Globalisation has opened up world markets with the growth of numerous worldwide networks, and technology plays an increasingly important role in people’s lives. People can talk to friends, family, colleagues or customers at any time and anywhere. With a click of a button, one can access information about virtually any subject. Globalisation has indeed exerted considerable influence in society, and together with Western symbols of dominance, such as McDonalds, television programmes and Coca Cola, the notion of ‘rights’ is also exported to many parts of the world, including Singapore. But in Singapore, the government has always made it clear that the push for a global free-market and for human rights must be balanced against the nation’s need to preserve political and cultural autonomy; that the Western model of democracy is not appropriate for all; and ‘that nations must be allowed to develop their own forms of human rights, i.e., which take the cultural context for its expression into account’ (Gopinathan, 2001: 6). Singapore has taken the view that neo-Confucian ideology is the most appropriate alternative framework for socio-economic and political organisation (Lee, cited in Gopinathan, 2001: 6). The style of government for a long time has therefore been paternalistic, authoritarian, inflexible and even – some would say – rigid. However, the speed at which globalisation is occurring has caused the government to rethink this position. The government realises that in order to be economically competitive, the country needs entrepreneurs and innovators, rather than citizens who just follow and expect to be told what and how to do things. This has led to several educational changes couched in various

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terms, among them, ‘Thinking Schools, Learning Nation’<sup>1</sup> and ‘Curriculum Reduction’<sup>2</sup>, aimed at cultivating a citizenry with the ability and skills to compete globally. One commentator has noted:

‘It is ironic that rote learning and hierarchy in Confucianism and traditional Asian systems which have been good for a stable government is now less suitable as creativity and innovativeness imply some “chaos” and “untidiness”. The new world needs political space and democratisation for individuals and the civil society to participate effectively.’ (Low, 2002: 411).

But although ‘the new world’ needs new ways, the government is not prepared to allow the nation to forget its roots or culture. ‘Thinking Schools, Learning Nation’ therefore comes together with National Education, which is basically citizenship education. The emphasis is on equipping our young (from primary to junior college level) with the knowledge of Singapore’s unique challenge, and how Singapore succeeded, despite all the constraints and vulnerability (Gopinathan and Sharpe, 2003). The attempt to create a common, unified culture, which can ‘be passed from one generation to the next’ (Lee, cited in Koh, 2004: 340) suggests an admission of cultural anxiety of the state: a fear that ‘globalisation may bring about the erosion of cultural and national identity’ (Koh, 2004: 340). But as Gopinathan and Sharpe (2003) have so aptly put it, ‘the terms of Singapore’s survival have changed, calling into question the relevance of long-standing strategies’. Policy makers in Singapore realise that there is a need to respond adequately and speedily to global imperatives, and the examples of education policies discussed above show an attempt by the state to keep up with the trends of globalisation and yet maintain national pride and citizen loyalty.

## Globalisation and Rights

It has already been mentioned that the ‘rights’ movement is one of the products of globalisation that is exported to many parts of the world, including Singapore. A classic example of this movement is seen in the influence of the American television drama ‘The Practice’. It was recalled by one legal practitioner<sup>3</sup> that some Singaporeans assert their rights under the First Amendment (which is part of the American constitution) rather than their rights under the Singapore Constitution. Singapore’s local newspapers frequently carry stories about people, who claim that their ‘rights’ have been violated – the right to privacy, the right to keep their dogs in their HDB flats,<sup>4</sup> animal rights and so on. The idea of ‘rights’ is conveniently used to support anything they think necessary for dignity and freedom.

In 1993, Mr Lee Kuan Yew, the former Prime Minister and the then Senior Minister of Singapore, expressed his view that in 10 to 20 years time a set of universal norms on human rights would be reached:

‘Mainly because of communications. We are seeing each other in our own sitting rooms, and we are passing judgement on each other. And that is something new. You are not just passing a message to your representative at the UN urging a vote of condemnation, which is known only to a few leaders or people in the Foreign Ministry. Everybody is watching and saying, “My God, how can they do this?” So this will lead to drastic change.’ (Burton, cited in Tan, 1999: 284)

Those who blatantly abuse human rights will face criticism and justice eventually. For example, there is constant and widespread criticism from the international community of the continued repression against Aung San Suu Kyi by the military in Burma by holding her under house arrest and detaining her supporters; and Slobodan Milosevic, former Yugoslavian president, is facing justice in the United Nations (UN) court for crimes against humanity (Parmly, 2001). Even business and corporations are urged to give globalisation a ‘human face’. For

<sup>1</sup> The ‘Thinking Schools, Learning Nation’ initiative includes the goal of broad-based educational outcomes, the recognition of the need to cater better to pupils with different talents, aptitudes and dispositions, the infusion of thinking skills, group and project work in the curriculum, the provision of one computer for every two students and broad-based internet access (Sharpe and Gopinathan, 2002: 151).

<sup>2</sup> The Ministry of Education, following the recommendations of an external review team, has embarked on a major curriculum reform in the form of curriculum reduction for all subjects and across all levels. The aim of the reduction is to free up space and time for teachers to promote thinking and self-directed learning, and a passion for continuous learning since these are vital skills needed for the new globalised economy (Koh, 2004; Press Release, 1998).

<sup>3</sup> Senior State Counsel during a lecture given to incoming principals at the National Institute of Education, Nanyang Technological University on 20 August 2004.

<sup>4</sup> These flats are built by the Housing and Development Board (HDB) under the public housing scheme, and flat owners are governed by the rules and regulations imposed by the HDB.

example, the Global Sullivan Principles<sup>5</sup> and the UN Global Compact<sup>6</sup> ‘encourage corporations, on a voluntary basis, to recognise international human rights, labour, and environmental standards’ (Parmly, 2001:59).

Thus, the 20th century saw the emergence of ‘political’ globalisation – a situation where different forms of international law and agreements govern issues ranging from war to crimes against humanity, to environmental issues, to human rights (Held and McGrew, undated). It is admirable that nations collaborate and form partnerships to deal with these issues, but these must be done in tandem with educating people about the very same issues. Education can teach universal values, such as tolerance and human rights, diversity of culture, and respect for others and the environment. Education can help students to strike a balance between society’s concerns and the rights of the individual. Education can enable students to acquire relevant knowledge and understand new values, and it can strengthen the autonomy of the individual so that individuals can catch up with ‘the evolution of their environment’ (Hallak, 2000: 28). Non-governmental organisations have an important role to play in strengthening and developing education, especially for a young nation like Singapore. Two international treaties that influence the development of education internationally are the Universal Declaration of Human Rights and the Convention on the Rights of the Child, and we shall now discuss the roles these two treaties play vis-à-vis rights, education and legal issues in education law in Singapore.

## Universal Declaration of Human Rights

Prior to World War II, each country had the prerogative to decide what rights to grant to its citizens. But after the horrific abuse of human rights carried out during that calamitous period, it was realised that human rights cannot be treated as the private business of individual countries, but was ‘a common concern for the international community’ (Ding, 1998). To address this issue, the United Nations (UN), in 1948, adopted the Universal Declaration of Human Rights (UDHR). The UDHR sets out the basic rights and freedoms to which all people (regardless of race, language, religion, sex and disabilities) are entitled. Although the UDHR was adopted by the UN in 1948, all member states that are admitted to the UN after 1948 are required to uphold the principles in the Charter of the UN and the UDHR. Singapore, as a member of the UN,<sup>7</sup> has reaffirmed and pledged her commitment to achieving and promoting universal respect for and observance of human rights and fundamental freedoms.<sup>8</sup> However, for many decades, Singapore has argued that her application of political and civil rights must be adapted in order for the nation to enjoy stability and economic development.

The two international covenants on human rights that act as the enforcement mechanism to protect basic rights and freedom are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Singapore is not a party to these two covenants and the main reasons given in the early years of Singapore’s development were that certain freedoms may need to be restricted as a short-term measure to eliminate poverty and to provide the conditions for economic growth. The government also argued that it aimed to secure peace in the country and would thus curtail civil liberties only when it had to (Bell, 2000). Indeed, the government’s efforts have transformed Singapore from a fragile, multi-ethnic society into a country with a developed nation status.

Since the government is managing its population and the economy so efficiently, why should it change the way it does things? This is a reasonable question, but with the progress Singapore has made, the ‘economic growth’ and ‘peace and security’ arguments are becoming less tenable. The arguments for not ratifying the ICCPR and ICESCR have thus recently shifted towards a more cultural standpoint. Asian leaders have argued that the interests of the community are more important than those of the individual, and that society should be placed above the self and issues resolved through consensus rather than contention. This is the so-called ‘Asian Culture’ (Little, undated; Oh, undated). But with the global flow of migrant workers in Singapore, wouldn’t this ‘Asian Culture’

<sup>5</sup> A code of conduct which companies can adopt. The main objective is to support human rights, social justice and economic opportunity. The Global Sullivan Principles was an expansion of the Sullivan Principles developed by Reverend Leon H. Sullivan in 1977 to end discrimination against blacks in the workplace in South Africa. Reverend Sullivan created the Global Sullivan Principles of Social Responsibility in 1997 to expand human rights and economic development to all communities, see: <http://www.globalsullivanprinciple.org>.

<sup>6</sup> A set of 10 principles which concern human rights, labour and the environment formulated by a group of business leaders in 1999, see <http://www.unglobalcompact.org>.

<sup>7</sup> Singapore became a member of the United Nations on 21 September 1965.

<sup>8</sup> See the UN Conference on Human Rights in Vienna 1993 and the United Nations Millennium Declaration adopted by the General Assembly on 8 September 2000.

be ‘complicated by the formation of new diasporic communities and new ethnicities’? (Koh, 2004: 340); and wouldn’t individuals in these communities want to know how the law can protect their individual rights?

Although Singapore is not a signatory to the ICCPR and ICESCR, her actions regarding human rights are still judged against the UDHR, which is the only international standard against which the observance of human rights is measured.<sup>9</sup> In fact, the UDHR has laid the foundation for more than 80 conventions and declarations on human rights, of which Singapore has acceded to two – the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women (Samydrorai, 2001).

The Singapore Constitution provides for freedom of speech, but in practice this freedom is restricted by an authoritarian style of government. The perceived government intimidation and pressure to conform often result in self-censorship among the people, and even journalists (Country Reports on Human Rights Practices, 2004). The government often makes reference to ‘out-of-bounds’ markers or issues. However, in recent years, there has been a shift toward greater tolerance for openness and free speech. For example, in 2001, the government permitted international human rights organisations<sup>10</sup> to observe the opposition politician J.B. Jeyaretnam’s bankruptcy appeal. In 2003, two representatives from the Lawyers Committee for Human Rights were allowed to attend another opposition politician Chee Soon Juan’s appeal of a summary judgement awarded against him in defamation suits brought by the former Prime Minister and then Senior Minister of Singapore (Country Reports on Human Rights Practices, 2004).

The human rights movement has gained momentum internationally. In participating in the Vienna Declaration of 1993 and the UN Millennium Declaration, Singapore is basically agreeing that human rights are interrelated and indivisible, and that they comprise civil, political, economic, social and cultural rights. Thus, the defence of ‘the right to development’ and ‘cultural differences’ in supporting the divergence in the application of human rights in Singapore may have to be re-examined in the light of the changes taking place in Singapore and globally. Let us take the example of the right to chew gum. The sale and import of chewing gum has been banned in Singapore since 1992. But Singapore has recently permitted ‘medicinal’ and ‘dental’ gum products to be sold in pharmacies as health products or as therapeutic preparations that aid smokers. What is the real reason? One commentator perceives that it is globalisation, in the form of a Free Trade Agreement, which has compelled even a country like Singapore to back away from national values (Nickel, 2003).

We are now in the age of rights and with the advance of internet technology, the people of Singapore are becoming more aware of human rights issues. Communications media and technology are now so decentralised that it is near impossible to keep foreign ideas away from local eyes and ears. The interactions across state borders by both governments and private citizens have markedly increased (Spickard, 1999). As pointed out as early as 1996 by a Singapore lawyer,<sup>11</sup> Singapore is clearly interconnected with the rest of the world through trade, industry, media, travel and even education. He went on to say, ‘A nation’s conduct as regards its citizens is no longer purely a matter of its internal laws; it is the legitimate subject of international concern’ (Tay, 1996: 750). In the next section, we shall examine Singapore’s response to the Convention on the Rights of the Child and the legal implications the Convention presents for schools in Singapore.

## Convention on the Rights of the Child

Singapore acceded to the Convention on the Rights of the Child (CRC) on 2 October 1995<sup>12</sup> and it came into force in Singapore on 4 November 1995. As a party to the CRC, Singapore was required to submit an initial report on measures adopted, which gave effect to the rights provided for in the CRC. A progress report had to be made on the enjoyment of those rights within two years of the CRC coming into force and thereafter every five years (Article 44 CRC).

<sup>9</sup> The UDHR is known and accepted as authoritative both in countries that became parties to the ICCPR and ICESCR and in those that did not ratify or accede to either. Because of its worldwide recognition under the domestic law of many countries, the UDHR has become part of the customary international law (OHCHR, Fact Sheet No. 2). It is also treated as an authoritative interpretation of the human rights provision in the UN Charter (Ding, 1998). As customary international law binds all states without exceptions and regardless of consent, the principles in the UDHR, arguably, must be obeyed by all member states (Tay, 1996).

<sup>10</sup> Representatives from Amnesty International and the Lawyers’ Rights Watch in Canada.

<sup>11</sup> Simon S.C. Tay LL.B Hons (National University of Singapore) LL.M (Harvard), who teaches international law at the National University of Singapore.

<sup>12</sup> Singapore entered some declarations and reservations on various articles of the CRC on its accession to the CRC. In the area of education, one of the declarations permits the judicious application of corporal punishment in the best interest of the child.

Although the CRC itself cannot be invoked before the courts of Singapore, it is implemented in Singapore through a number of statutes and their subsidiary legislation. They include the Children and Young Persons Act, the Women's Charter, the Criminal Procedure Code, the Penal Code, the Adoption of Infants Act, the Guardianship of Infants Act and the Compulsory Education Act.

Singapore's initial report on the CRC was submitted in April 2002 and the UN Committee on the Rights of the Child (the Committee) released its comments on this report in October 2003. The Committee was of the view that Singapore had not fully reflected all the principles and provisions of the CRC in her domestic legislation:

'The Committee recommends that the State party undertake a comprehensive review of its legislation and take all necessary measures to ensure its conformity with the principles and provisions of the Convention' (Committee on the Rights of the Child, 2003a: 2).

The Committee also criticised the Singapore government for not setting up an 'independent mechanism' with authority and mandate to monitor and evaluate the country's implementation and progress of the CRC. The Committee

'encourages the State party to establish an independent and effective mechanism, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights..., which is provided with adequate human and financial resources and easily accessible to children and which monitors the implementation of the Convention, deals with complaints from children in a child-sensitive and expeditious manner, and provides remedies for violations of their rights under the Convention' (Committee on the Rights of the Child, 2003a: 3).

The Committee observed the presence of discrimination against persons with disabilities, the inadequate provision of or avenues for children to express their views in all matters affecting them, the use of corporal punishment as a form of discipline, the absence of legislation to require social workers, teachers and medical personnel to report suspected cases of child abuse, and the lack of human rights education in schools and for the public (Committee on the Rights of the Child, 2003a).

In setting these principal subjects of concern, the Committee also spelt out its recommendations.<sup>13</sup> To show Singapore's commitment to the CRC, the government would have to consider carefully the recommendations and examine her progress and implementation of the CRC before the second and third periodic reports were due in 2007.<sup>14</sup>

Singapore does not have a strong rights culture, and the government does not like formal legal structures to regulate such issues, as can be seen in the lack of legislation in this area. However, by acceding to the CRC, Singapore has opened herself up to international scrutiny and is obliged to make all reports on its progress on the CRC public. Singapore, in practice, does not show any gross or widespread abuses of the rights of the people of Singapore. But as the 'rights culture' continues to grow and people become more educated about 'human rights', they will inevitably demand to be heard. Schools will similarly expect such demands from well-educated and well-informed parents, and school leaders will have to be well-prepared to meet the challenges that these sets of stakeholders will pose to them.

## CRC and the Schools

Russo and Stewart (2001) observed that in many common law countries, there has been an increase in the legal processes to guide policies, practices and decision-making in all educational institutions, in particular, schools. Apart from the UDHR, the CRC also plays an important role in promoting this increase. Many articles in the CRC that apply to schools require educators to formulate and implement policies that reflect the principles in the CRC. There are many articles in the CRC that impact on education. We consider below some of the significant ones.

<sup>13</sup> For the full report, refer to United Nations, Convention on the Rights of the Child. Document No. CRC/C/15/Add.220 dated 27 October 2003.

<sup>14</sup> The Committee has allowed, as an exceptional measure, Singapore to submit its second and third periodic reports in one consolidated report by 3 November 2007, the date on which the third report is due. This is to enable Singapore to catch up with its reporting obligations.

Article 3 states that in

‘all actions concerning children...the best interests of the child shall be a primary consideration, ... institutions ... responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the area of safety ... as well as competent supervision’.

To promote the best interests of the child, Article 12 states that ‘a child who is capable of forming his or her own views... to express those views freely in all matters affecting them’. Article 19 reinforces the importance of protecting the physical welfare of children by requiring parties to the CRC to ‘take all appropriate measures to protect children from violence, injury or abuse, maltreatment or exploitation and to undertake prevention and support programs’. Article 23 recognises the needs of children with physical and/or intellectual disabilities and Article 28 provides that ‘primary education’ must be made ‘compulsory and available free to all’. How, then, has Singapore responded to the principles of the CRC when compared with other countries?

### **Compulsory Education**

While acceding to the CRC, Singapore has expressly reserved the right not to make primary education compulsory, the reason being ‘such a measure is unnecessary in our social context where in practice virtually all children attend primary school’ (United Nations Treaty Collection, 2001). But with the government’s rhetoric indicating that every Singaporean counts, and with Singapore being a progressive country, it would have been an anomaly had education not been made compulsory in Singapore.

Primary education was eventually made compulsory in 2003 but, as a speaker in Parliament correctly said, six years of primary level education will not adequately prepare a person to meet even the most basic challenges of a knowledge-based and globalised economy (Parliamentary Debates, 2000: 851). Many developed countries have made education compulsory at least for primary and secondary schools, with England and some states in Canada requiring parents to register their children in schools at pre-school level. The definition of a ‘child’ in CRC is one that is ‘below the age of eighteen years’ (Article 1). Although the CRC requires State Parties to ‘make primary education compulsory and available free to all’ (Article 28), some might argue that the government should nevertheless consider the spirit of the CRC when setting the criteria for compulsory education in Singapore, and follow the example of other developed countries in ensuring a minimum of at least 9 to 10 years of compulsory education so as to more adequately prepare young people for the future.

### **Corporal Punishment**

Singapore has declared that a child’s rights, as defined in Articles 12 to 17 of the CRC, do not prohibit ‘the judicious application of corporal punishment in the best interest of the child’ (United Nations Treaty Collection, 2001). This is contrary to a fundamental principle in the CRC that a child should be protected from all forms of violence (Article 19) and, therefore, non-violent forms of discipline should be adopted for school discipline. However, even in many developed countries, corporal punishment is not completely banned. For example, in some states in the USA, the decision as to whether children or youths should be physically punished is a policy question left for educators to decide (Fischer, 2003). In Canada, most school districts disallow the use of physical discipline (Anderson and Fraser, 2002), but, the Criminal Code of Canada provides a defence for teachers who do mete out corporal punishment. In both the US and Canada, the common law principle that physical punishment must not be unreasonable or excessive is strictly applied. In England, corporal punishment is banned in schools on the ground that this policy preserves the human dignity of a child, and respects parents’ basic human right to ensure that their children are educated in a way that is not offensive to them (Harris, 2002; The Head’s Legal Guide, Croner, 1999).

The Committee on the Rights of the Child (2003) recommends that Singapore amends its legislation to prohibit corporal punishment in the home and in schools. The government has not followed up on the recommendation, but the Ministry of Education (MOE) has given broad guidelines to school principals on managing student discipline. On the use of corporal punishment, very specific guidelines are given (Principal’s Handbook, MOE; Education (Schools) Regulations). The law of tort also provides students with legal redress should any corporal punishment be excessive and unreasonable.

Asians believe that the age of a person equates with maturity and knowledge, and they are respected for these attributes; such respect is often given according to the hierarchical order (Sandhu, cited in Mathews, 1999: 102). Besides age, official position is also regarded as a form of social status. Students are expected to treat teachers with respect as teachers are deemed to be experienced and educated persons, who are knowledgeable enough to deal with schooling issues and even personal problems (House and Pinyuchon, cited in Mathews, 1999: 102). In Singapore, there is still a strong culture of respect for the authority of parents and teachers. This was seen in the public outcry following the stepping-down of a secondary school principal after he hit a female student with a book.<sup>15</sup> It could be argued that, with MOE's guidelines on corporal punishment, the remedy in common law for abuse, and a culture of respect for authority, there may not be a need for Singapore to withdraw its declaration on corporal punishment. Nevertheless, the international pressure to promote 'rights in education' is evident and the Minister of State for Education, Mr Chan Soo Sen, acknowledged that Singapore may have 'to move with the times' and eventually review her 'approach to caning and spanking' (Committee on the Rights of the Child, 2003b).

### Safety in Schools

Each child is expected to be educated in a safe school environment, and this expectation is evident in the articles declared in the CRC. The notion of the best interests of the child is interpreted very strictly when determining the rights of the child in the education context. The scope of the duty of care of educators in respect of the child's safety in school includes not only the physical safety but also the psychological safety of the child (De Waal, 2002). Safety in schools encompasses a whole range of related issues. They involve negligence resulting in injury, violence in schools by students, peer harassment in the form of bullying, sexual misconduct by teachers, and child abuse of students by care-givers at home. Many countries have some form of legislation to safeguard the physical welfare of students. Such legislation generally imposes on education authorities, private school proprietors, senior post holders in schools and all teachers a duty to take care of the health, safety and welfare of the teachers and students in schools. A more complex duty of care issue that has entered the education scene is that of bullying that occurs on school premises. Schools have had to deal with claims for physical or psychological harm for their failure to prevent bullying.

In Singapore, there is no specific legislation that deals with the health, safety and welfare of students in schools. However, the common law of negligence and occupier's liability, combined with the numerous guidelines in the Principal's Handbook on safety, provide at least some guidance on the standard of care required by educators. Examples of guidelines in the Principal's Handbook are guidelines on: 'Safety and Health Precautions in School Tuckshops', 'Safety Precautions in Science Laboratories, Technical Workshops, Computer and Home Economics Rooms', 'Safety Precautions in Physical Education (PE) lessons/Trim and Fit (TAF) Programme/National Physical Fitness Award (NAPFA) Test', 'Safety Precautions for Pupils Outside School', and 'Safety Precautions on the Air Rifle Range' (B361, Principal's Handbook). While these guidelines may offer some assistance in the planning and conducting of school activities in a safe manner, they do not replace the corresponding legal responsibilities of those in authority and the need for educating principals and teachers about the rights of students in law.

Most countries have legislation protecting children from abuse. Singapore has similar legislation reflected in the Children and Young Persons Act, but as pointed out by the Committee on the Rights of the Child, there is no legal requirement for teachers to report suspected cases of child abuse. One may argue that teachers have a 'moral duty' to act on evidence or suspicion of such cases, but even if only one teacher fails to exercise this moral duty, it is one too many. The Principal's Handbook encourages schools to report cases of child abuse, neglect and ill treatment to the Family and Women's Welfare Branch and the Ministry of Community Development and Sports (B332, Principal's Handbook). However, no guidance is given on the various symptoms of abuse and neglect and the correct approach to reporting one's suspicions. Article 19(2) of the CRC requires state parties to provide effective procedures for identifying and reporting abuse and neglect. A police spokesman said in a newspaper report (*The Straits Times*, 7 August 2004) that nine out of 10 rape victims in 2004 knew their attackers, many of whom were family or friends. In the same report, the chairman of the Women and Safety Committee at the Association of Women for Action and Research (Singapore) said, 'Worldwide statistics show nine out of

<sup>15</sup> The principal of Nan Chiau High, while reprimanding the student with disciplinary problems, lost his temper when she lied to him, and hit her with a soft-cover book. The Principal's Handbook and the Education (Schools) Regulations expressly prohibit any form of corporal punishment to be administered on a girl. The majority of the public felt that even if the principal's action was wrong, he had acted with good intentions and the MOE should not have allowed him to step-down.

every 10 rape cases go unreported'. If Singapore is to take her commitment to promoting 'the best interests of the child' seriously, the government should provide at least more effective procedures, if not appropriate legislation, to fulfil the requirements in Article 19(2).

In early 2004, there were newspaper reports detailing the sexual misconduct of two male teachers in Singapore.<sup>16</sup> These teachers were convicted and punished under the law. Unlike the English and Canadian jurisdictions, where there is specific legislation explaining what constitutes sexual offences by teachers, Singapore's law simply states that it is an offence for a person 'to have carnal connection with any girl below the age of 16 years except by way of marriage' (section 140(i) Women's Charter, Chapter 353). In terms of guidelines, the MOE expresses teachers' misconduct as 'conduct prejudicial to good order or discipline' or 'immoral behaviour', among other examples (Teachers Handbook, 2002: 39). In England, teachers and other school staff who have any sexual activity with someone below 18 years of age commit the offence of 'abuse of trust' (section 3, Sexual Offences (Amendment) Act 2000, Chapter 44). Similarly, the law in Canada makes it a criminal offence for a person who is in the position of trust or authority to (for a sexual purpose) touch any part of the body of a young person who is below 18 years of age (section 153, Criminal Code of Canada, Chapter 46). It may be argued that it is time for Singapore to review its law and policies in this area, or at least to implement a code of ethics to help principals and teachers know, in the eyes of the teaching profession, what constitutes sexual misconduct or sexual offence, and when and how to report suspicions of such sexual misconduct/offence by teachers. In the meantime, we have to rely on each individual's moral conviction, and some convictions may fall way below generally accepted norms.

### Special Education

Special education (SPED) schools are the main providers of education for children with disabilities in Singapore. As at January 2004, other than two other private centres,<sup>17</sup> there are 20 SPED schools run by Voluntary Welfare Organisations (which receive funding from the Ministry of Education (MOE) and the National Council of Social Services). Although SPED schools are the ones mainly responsible for the education of children with disabilities, the policy of MOE is to allow pupils who are successful in the Primary School Leaving Examination<sup>18</sup> to leave SPED schools to continue education in mainstream secondary schools (MOE, 2004).

The current policy appears to be in line with the *Report of the Advisory Council on the Disabled: Opportunities for the Disabled* stating that 'whenever appropriate and feasible, special education should be provided within the regular education system. A child should only be placed in a special school if he cannot be well educated in a regular school' (Lim and Tan, 2001; 37-38). A survey of the improvements and modifications made to the physical environment of various schools further suggests that considerable efforts have been made to support the notion of 'inclusive education'. However, as pointed out by Lim and Tan (2001), the system of inclusive education in Singapore is not without tensions and limitations. We will now look at three such limitations.

First, although initial teacher training does include reference to disabilities, the emphasis is on ensuring that trainee teachers master basic skills in teaching and learning. They are not trained with sufficient skills, knowledge or confidence to integrate students with disabilities in their classes. This lack of training further translates into regular teachers being unable to identify special needs pupils other than those with physical or sensory disability.

Another limitation is one where education is increasingly becoming 'market-based' and where competition and standards are vital to a school's survival. In such an environment, schools are compelled to compete with one another, and one way is to recruit the best cohort of students so that the school's performance can be boosted. Naturally, students with disabilities, especially those that have learning difficulties, are deemed to be less desirable (Lim and Tan, 2001). Although there is no evidence that principals reject students with learning difficulties at the outset, informal conversations with principals reveal that when special needs students (for example, those that are autistic or who suffer from Attention Deficiency Hyperactive Disorder) become too disruptive, principals will strongly encourage parents to withdraw their child from their school and place him or her in a SPED school.

<sup>16</sup> In the first case, a male teacher was jailed for seven years for having sex 18 times with his 14 year old student. In the second case, a married teacher was jailed for 16 months after pleading guilty to having oral sex with his 14-year-old former student. Under the Penal code, it is both a criminal offence to have carnal connections with a girl under the age of 16 and to perform oral sex (s. 140(i) Women's Charter and s. 377 Penal Code).

<sup>17</sup> These two centres are the 'Genesis School for Special Education' which is a commercially run centre, and the 'Dover Court Preparatory School' which is a foreign system school with a special education department.

<sup>18</sup> The Primary School Leaving Examination is a placement examination taken in Primary Six. The results will determine whether students go on to secondary schools to complete an additional four to five years of secondary education.



Unlike the United States, England and other commonwealth countries, the concept of inclusion is not a 'right' in Singapore. In fact, the Compulsory Education Act allows children with special needs or learning disabilities to be exempted from its provisions. The government is of the view that enforcement of compulsory education on parents of children with learning disabilities will be unduly harsh on them.

Although efforts have been made to enhance opportunities for inclusive education, the third limitation is seen in the research carried out by Rao, Lim and Nam (2001), which indicates that there is still a lack of resources in terms of school personnel, flexible curriculum and suitable physical setting in the classrooms.

Mr Stephen Woodhouse, the Independent Consultant with experience in the work of the UN and UNICEF, in a keynote address on 'The Status of Children in Singapore – Regional and Global Benchmarks', congratulated Singapore on her excellent efforts in 'promoting children's welfare in a rapidly changing world' (Woodhouse, 2004). One of the ways in which Singapore promotes the welfare of children with disabilities is through integration of these children into the mainstream schools. But while this may look good on the surface, the underlying problems faced by schools and parents, as discussed briefly above, remain largely unresolved. The government's objective of excluding special needs children from the compulsory education legislation is to allow special needs children to attend SPED schools and learn at their own pace (Report of the Committee on Compulsory Education in Singapore, 2000). However, there are insufficient SPED schools to meet the demand.<sup>19</sup> Since special needs children are exempted from the Compulsory Education Act, some may end up not being in school at all.

Article 23 of the CRC specifically refers to the right of a mentally or physically disabled child to enjoy a full and decent life, and this necessarily includes effective access to and receipt of education. From the available literature and newspaper reports in Singapore, there appears to be little evidence to show that, in practice, 'the best interest' principle is applied to children with disabilities. One parent commented,

'parents with special-needs children are faced with the dilemma of not knowing where to place their children at school-entry age. The present education system does not cater to the slower learners. At the same time, the parents are not sure the existing physical environment of special primary schools is conducive to learning' (The Straits Times, 23 October 2003).

Despite the moves to integrate children with special needs into mainstream schools and the steps taken to enhance the support for these children, there has been no attempt to formalise this process into the education legislation or at least to give clearer guidelines on placement and special educational provision. As mentioned above, the government argued that, if compulsory education were to include education in SPED schools, the enforcement of compulsory education may be unduly harsh on the parents of children with special needs. But some parents do not send their children to SPED schools because of the costs. This can be overcome by making education at SPED schools free for such children. The principal objective of introducing compulsory education is to ensure that every child is given the opportunity to maximise his or her potential. If a child with special needs cannot attend a mainstream school, then he or she should be sent to a SPED school as part of the requirement of compulsory education. Perhaps there are lessons that can be learnt from the experience of special educational needs in other developed countries in this regard, and measures adopted and implemented to give disabled children in Singapore what they rightly deserve – the best opportunity to learn.

## Privacy

Article 16 of the CRC states:

'No child shall be subject to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation', and, 'the child has the right to the protection of the law against such interference or attacks'.

In short, every child has the right to privacy. But Singapore does not have any general laws on privacy, and there are no cases in Singapore that have recognised a legally enforceable right to privacy *per se*. The laws pertaining to privacy and personality are 'mostly piecemeal and are to be derived mainly from various branches of the law'

<sup>19</sup> *The Straits Times*, 22 March 2003 – there is a huge demand for places in special needs schools with programmes for autistic children. More teachers are being trained so that by 2006, 400 more autistic children may benefit.

(Hwang and Chan, 2001).<sup>20</sup> Schools collect and maintain a great deal of information about students and their families, much of which is personal, confidential or sensitive in nature. They are also constantly faced with requests for some of that information, perhaps by solicitors or other private agencies. Do schools have a duty to protect students' personal information? Under the common law, there is a branch of law known as the law of confidentiality, which may be used to protect confidential information concerning a person or his activities, and it is this branch of law that may protect a student's right to privacy (*X Pte Ltd v. CDE*, 1992<sup>21</sup>). Article 16 above also reminds us that teachers and school administrators may have an obligation to ensure that information on a student is not misused so that there is potential for breach of confidence or defamation.

## Conclusion

Seymour Martin Lipset (1980), in his book entitled 'Political Man', said that the more the economy grows, the more likely it is that stable democratic forms of politics will emerge. In a post-industrial economy and in a shifting world, where the government promotes creativity, innovation and enterprise, Singapore needs an even more democratic environment, giving relative freedom to individuals to experiment, to freely express themselves, and to take risks as entrepreneurs in order to maintain or extend the nation's competitive edge over other rich countries (Spickard, 1999; Bell, 2000). One would argue that this idea of 'individualism' supports the ideals of human rights, and an authoritarian model of governance is incompatible with a human rights framework.

The tenor of the rhetoric from government ministers in past years has been that Singapore needs to be a more open society. The third Prime Minister of Singapore, Mr Lee Hsien Loong,<sup>22</sup> in his inaugural speech, spelt out his vision for Singapore to be an 'open and inclusive society', which is a reiteration of the theme in his speech given at the Harvard Club's 35th anniversary dinner on 6 January 2004,

'I have no doubt that our society must open up further. The growing participation and diversity over the last two decades have been vital pluses for Singapore, enabling us to adapt to changing conditions, and to the needs and expectations of a new generation' (The Straits Times, 13 August 2004).

By encouraging participation in decision making, the government is enabling people to own their choices and to contribute to the vision and growth of the nation. By encouraging openness and diversity, and by promoting, respecting and observing universal human rights and fundamental freedoms in the form of the UDHR and the CRC, each new generation will only develop greater respect for rights in the society. In fact, the education system in Singapore should teach children what their rights are (for example, freedom of association, freedom of speech, the right to primary education) and specify the object of each right. In teaching children their rights, children will also learn about their corresponding responsibilities.

This paper has touched briefly on globalisation trends and international trends in relation to human rights and their impact on education policies in Singapore. But more importantly, in examining the CRC vis-à-vis schools, this paper emphasises the importance of education law for schools in Singapore. As we look at other countries, we can see things happening that appear to parallel developments in Singapore. For example, there is a growing concern abroad about corporal punishment, negligence in schools, sexual assaults by teachers and bullying by students. As seen earlier, these are issues that have also surfaced in Singapore (Teh, Stott and Zuzarte, 2004).

The 'rights culture' is indeed growing and people, including students and teachers, are demanding to be heard and be treated fairly. The Singapore Teachers' Union's (STU) General Secretary, Mr Swithun Lowe observed a 'changing scenario', where 'more educated parents are ready to take teachers to task for problems between teachers and their children', and he stated that STU was prepared to defend members who are sued or unreasonably abused by parents in the course of their duties (Lowe, 2004: 2-3).

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<sup>20</sup> Examples of some of the relevant laws are the Copyright Act, The Computer Misuse Act, the Miscellaneous Offences (Public Order and Nuisance) Act, the Telecommunications Authority of Singapore Act, the Vandalism Act and various section of the Penal Code.

<sup>21</sup> In this case, the defendant claimed that under Art. 14 of the Constitution of Singapore, she was entitled to freedom of speech and expression, thus she was free to divulge the sex life of her ex employer. The plaintiff successfully argued that Art. 14 was subject to the existence of the equitable duty of confidence in Singapore.

<sup>22</sup> Mr Lee Hsien Loong was sworn in as the third Prime Minister of Singapore on 12 August 2004.

Two commentators said that educators (education professors, superintendents, principals and teachers) need to realise that ‘the significance of school law presents a unique intellectual challenge’ to prepare them (educators) to be more proactive (rather than reactive) in meeting the needs of staff, parents, students and the community (Russo and Stewart, 2001: 23). Indeed, education law is an emerging area of nascent importance in Singapore. If these commentators are right, then it will not be adequate for educators simply to facilitate an ‘open and inclusive society’ that can meet the demands of global interactions. It will also be incumbent on educators to recognise and have a broad understanding of the issues and legal concepts in education law to meet this ‘unique intellectual challenge’ in their day-to-day, real life situations.

Although there is no single piece of legislation that addresses all the rights of a child as set out in the CRC, a child’s rights in Singapore are nevertheless reflected in various statutes and their subsidiary legislation. In recognising the rights of the child in all these statutes, ‘the best interests of the child’ are always of paramount importance. But for teachers, acting in the best interests of the child may not be as simple as it sounds. Children today come to school with all kinds of different needs, many which are emotional, rather than physical needs. Sometimes, acting in the best interests of the child means requiring a teacher to gather information on what happens to a child outside the classroom, and taking appropriate action; for example, reporting an abusive parent to the relevant authorities or dealing firmly with a school bully. Undoubtedly, teachers’ jobs are very stressful, for very often, their role as a teacher is not confined to teaching alone, but they are also involved as counsellors, social workers and sometimes mediators, in addition to the various administrative roles demanded of them. Nevertheless, as the ‘rights culture’ continues to manifest itself, teachers will find themselves inexorably drawn into yet another area of involvement – education law. The illustrations given earlier are just two examples of legal issues<sup>23</sup> that teachers will have to grapple with, and there will be many other legal issues that will eventually confront teachers in their daily duties.

In highlighting some of the important provisions of the CRC as they relate to schools and education in Singapore, this paper has shown that a better and more comprehensive legislative framework is needed to respond to the objectives of the Convention. But it’s more than having legislation in place. Educators too have a duty to know about legal rights and responsibilities and educate those in the school and community so that these objectives can be met. It is a collective effort on the part of the government and educators. Like it or not, we are caught up in the Zeitgeist of globalisation and rights, and if Singapore recognises the importance of meeting international standards in this respect, then both the government and the people on the ground will have to press on with reforms and changes in education and law to gain Singapore the recognition and acceptance that she rightly deserves.

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<sup>23</sup> The first example concerns possible child abuse and the reporting procedures under the Children and Young Persons Act (Cap. 38) and the second example deals with the common law duty of care to prevent a child from suffering physical or psychological harm while in school.

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