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# DOMESTIC CHILD ABUSE UNDER THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: IMPLICATIONS FOR CHILDREN'S RIGHTS IN FOUR ASIAN COUNTRIES

Paula C. Littlewood

*Abstract:* The United Nations Convention on the Rights of the Child is the first binding treaty to endorse children's rights as separate from both adults and the family, and is thus an important step in international law toward recognition of children as rights bearers. An inquiry into the extent to which children enjoy human rights logically begins with Article 19 of the Convention which guarantees a child's right to freedom from abuse and neglect by any party. While most literature in this area concentrates either on the rights guaranteed by the Convention or issues raised by studying child abuse across cultures, this Comment incorporates elements of both approaches into its analysis. Examination of the child abuse statutes and relevant policies of Hong Kong, China, Singapore, and Indonesia reveals that child maltreatment is particularly influenced by cultural relativism. This analysis further indicates that cultural attitudes, a government's regulatory strength within the familial context, and economic prosperity all contribute to obscure the fine line between child abuse and child discipline. Consequently, a full realization of the benefits guaranteed by Article 19 in these four countries may not be achieved until children are understood as rights bearers within the family as well as in society.

## I. INTRODUCTION

With the adoption of the Convention on the Rights of the Child on November 20, 1989,<sup>1</sup> child advocates around the globe heralded the commencement of a new era for children's rights. The Convention was the culmination of ten years of drafts and discussion,<sup>2</sup> yet less than one year after it was opened for signature the Convention entered into force.<sup>3</sup> It continues to be one of the most widely ratified treaties in force.<sup>4</sup> While the

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<sup>1</sup> Convention on the Rights of the Child, G. A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989) [hereinafter Convention].

<sup>2</sup> Michael Jupp, *The United Nations Convention on the Rights of the Child: An Opportunity for Advocates*, 34 *HOW. L.J.* 15, 20 (1991).

<sup>3</sup> CHILDREN'S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD COMPARED WITH UNITED STATES LAW iii (Cynthia Price Cohen & Howard A. Davidson eds., 1990).

<sup>4</sup> As of July 1, 1996, the Convention had been ratified or acceded to by 187 States. *Note by the Secretary-General, 13th Session*, U.N. Committee on the Rights of the Child, ¶ 2, U.N. Doc. CRC/C/56 (1996). It has been suggested that one reason for the Convention's popularity is that all over the world, people believe that children are vulnerable to the most serious forms of human rights abuse; thus, a treaty which seeks to protect children is not going to be as controversial as other specialized conventions may be.

Convention is not the first international agreement to address the rights of children, its passage does mark the first binding treaty to deal specifically with children's rights as separate from both adults and the family.<sup>5</sup> In addition, it is significant that children's rights in the Convention do not derive from the rights of adults, but rather children are in essence *sui generis*.<sup>6</sup>

As with any international agreement, however, the critical inquiry arises as to whether states are complying with the provisions of the treaty and whether the intended benefits are being realized. Since the fifty-four articles of the Convention cover a wide range of issues concerning children's civil and political rights as well as their social, economic and cultural rights, this Comment focuses primarily on Article 19 of the Convention which pertains to a child's right to freedom from abuse and neglect by any party.<sup>7</sup> Every day, millions of children are abused, neglected, and exploited,<sup>8</sup> and this maltreatment is often suffered at the hands of the adults they trust most.<sup>9</sup> For this reason, Article 19 seems a fundamental starting point for an inquiry into the extent to which children are enjoying human rights, and, specifically, the impact that cultural relativism has on their ability to realize fully their rights under the Convention.

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LAWRENCE J. LEBLANC, *THE CONVENTION ON THE RIGHTS OF THE CHILD: UNITED NATIONS LAWMAKING ON HUMAN RIGHTS* xii (1995). Moreover, the Convention may be widely perceived as necessary, and at a minimum more beneficial than harmful. *Id.* at xvi.

<sup>5</sup> At least eighty international instruments regarding the special status of children have emerged since the 1930s. Karen McSweeney, *The Potential for Enforcement of the United Nations Convention on the Rights of the Child: The Need to Improve the Information Base*, 16 B.C. INT'L & COMP. L. REV. 467, 468 n.6 (1993). Although many of the rights included in the Convention appear as general principles in other human rights documents, none apply these rights to children specifically. *Id.* at 471.

<sup>6</sup> Robert F. Drinan, S.J., *Saving Our Children: Focusing the World's Attention on the Abuse of Children*, 26 LOY. U. CHI. L.J. 137, 138 (1995).

<sup>7</sup> The full text of Article 19 states:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Convention, *supra* note 1, art. 19 at 169.

<sup>8</sup> McSweeney, *supra* note 5, at 467.

<sup>9</sup> See *infra* note 49 and accompanying text.

This Comment first traces the background of children's rights as they have evolved over the centuries leading up to adoption of the Convention. The first part also includes some general observations about child abuse and the difficulties encountered when considering the problem across cultural boundaries. Importantly, the term "child abuse" can encompass a number of maltreatment categories. Four of the major, recognized types are abandonment, neglect, assault, and sexual offenses.<sup>10</sup> For purposes of this discussion, however, the emphasis will be on abuse stemming from assault, particularly that occurring within the child's domestic environment.

Second, this Comment analyzes the child abuse statutes and relevant policies of Hong Kong, China, Singapore, and Indonesia to determine if these states are complying with their obligations under Article 19 of the Convention. The selection of these countries is based on the fact that Hong Kong and Singapore represent two of the more successful newly industrialized countries ("NICs") in the region, while China and Indonesia lag further behind on the curve of industrialization and wealth.<sup>11</sup> Moreover, the four countries provide an interesting cross-section of the region since Indonesia and China are both key nations of world hunger<sup>12</sup> as well as two of the most populated countries in the world.<sup>13</sup> This demography is in sharp contrast to their NIC neighbors who enjoy relatively high standards of living and stronger economies.

The third section explores how each country is dealing with the problem of child maltreatment and analyzes whether each state is complying with Article 19 of the Convention. Finally, it concludes with a discussion of how factors such as cultural attitudes, the regulatory strength of a country's government within the familial context, and economic prosperity influence the manner in which these countries address the problem of child abuse.

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<sup>10</sup> Cynthia Price Cohen, *Freedom from Abuse: One of the Human Rights of Children*, 11 U. Dayton L. Rev. 601, 613 (1986) [hereinafter *Freedom from Abuse*].

<sup>11</sup> The annual income per person for the four countries is: Hong Kong \$13,430; Singapore \$14,210; China \$370; Indonesia \$610. OXFORD ENCYCLOPEDIA WORLD ATLAS 117, 127, 114, 129 (Caroline Raynor ed., 1995) [hereinafter OXFORD].

<sup>12</sup> Drinan, *supra* note 6, at 140.

<sup>13</sup> China is the most populous country in the world with approximately 1.2 billion people, while Indonesia is the fourth most populous nation with a population of over 194 million. OXFORD, *supra* note 11, at 113, 129.

## II. BACKGROUND

### A. *Children's Rights and the Convention*

The maltreatment of children is not a phenomenon unique to this century; yet an effective solution to the problem remains elusive despite numerous international instruments and extensive research on the subject.<sup>14</sup> Of course, it has only been since the early eighteenth century that advocacy efforts on behalf of children began to emerge and produce significant results.<sup>15</sup> Prior to these efforts, parents exercised practically unlimited power over their children and they were free to ignore, abandon, or even sell their children into slavery if they desired.<sup>16</sup>

One explanation for this unhampered control by parents is that children were essentially without identity and considered akin to animals and slaves.<sup>17</sup> As such, children were regarded as property that could be disposed of at the will of their parents.<sup>18</sup> Not until the early nineteenth century were children beginning to be understood as a valuable property, consequently a "child-saving" era emerged during which it became a priority to assure the health and welfare of children.<sup>19</sup> In the wake of the undesirable conditions created by growing industrialization and urbanization, a widespread belief developed that "children were the essential human resources whose mature form would determine the future of society."<sup>20</sup> Soon after the emergence of this new image, laws aimed at protecting children and fostering their development began to appear.<sup>21</sup>

Thus, it is not surprising that children's rights until recently have not been perceived as a body of law distinct from the larger realm of individual

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<sup>14</sup> See *supra* note 5 and accompanying text.

<sup>15</sup> Early in the eighteenth century children began to be perceived as members of a special class deserving protection from their parents who were charged with maintaining and educating them. Roger J.R. Levesque, *The Internationalization of Children's Human Rights: Too Radical for American Adolescents?*, 9 CONN. J. INT'L L. 237, 246 (1994). By the late eighteenth century and early nineteenth century, measures aimed at protecting children from exploitation started to emerge through labor laws, compulsory schooling laws, child abuse and neglect laws, as well as other types of state protection against parental abuse. Christine Alice Corcos, *The Child in International Law: A Pathfinder and Selected Bibliography*, 23 CASE W. RES. J. INT'L L. 171, 171 (1991).

<sup>16</sup> Levesque, *supra* note 15, at 245.

<sup>17</sup> *Id.* at 246.

<sup>18</sup> Corcos, *supra* note 15, at 171.

<sup>19</sup> Levesque, *supra* note 15, at 247.

<sup>20</sup> *Id.*, quoting Stuart N. Hart, *The History of Children's Psychological Rights*, 58 VIEWPOINTS IN TEACHING AND LEARNING 1, 4 (1982).

<sup>21</sup> See *supra* note 15.

human rights.<sup>22</sup> Prior to adoption of the Convention, those children's rights that were recognized by lawyers and legal scholars were perceived as deriving from either their parents' rights or those individual human rights contained in international or domestic law.<sup>23</sup> The Convention, on the other hand, signals not only the first international agreement to identify children's rights as distinguishable from those of adults, but also places children in a status equal to that of other minorities in international law.<sup>24</sup>

Importantly, the Convention culminates a long procession of efforts to elevate children's rights to a position of international prominence and legal status. Various organizations between 1923 and 1959 had proposed a number of covenants, declarations and conventions emphasizing the human rights of children, and in 1959 the Declaration of the Rights of the Child was adopted by the United Nations.<sup>25</sup>

The Declaration was merely a non-binding resolution, however, comprised of provisions which called for the protection of conditions of freedom and dignity for children through enactment of laws as well as a clarification of children's rights and the fundamental role of parents.<sup>26</sup> In the year prior to the 1979 International Year of the Child, Poland proposed that the United Nations incorporate the aspirational principles of the Declaration into a treaty which would give legal recognition to children's rights.<sup>27</sup> The result was the adoption of the Convention<sup>28</sup> which challenged the traditional parental-property attitude toward children by obligating States to ensure that parents recognize and ensure their children's rights.<sup>29</sup>

Thus, unlike its 1959 predecessor, the Convention is unique not only because it is a binding agreement on all of the States Parties, but more importantly because it gives children priority in the adoption of State

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<sup>22</sup> Corcos, *supra* note 15, at 171.

<sup>23</sup> *Id.*

<sup>24</sup> See *supra* note 5 and accompanying text (children's rights as distinguishable from adults'); see also Corcos, *supra* note 15, at 173 (children, like minorities, receive legal protection in international law). For children to enjoy the status of rights bearers as envisioned by the Convention, it is clear that a higher level of physical and mental integrity must be accorded children. In this respect, the Convention does not seek to secure special rights for children, but rather endeavors to deliver them equal protection. See *infra* notes 252-258 and accompanying text for a further discussion.

<sup>25</sup> *Id.* at 177. Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16), at 19, U.N. Doc. A/4354 (1959), cited in Levesque, *supra* note 15, at 267 n.117 [hereinafter Declaration].

<sup>26</sup> Levesque, *supra* note 15, at 268-69.

<sup>27</sup> Corcos, *supra* note 15, at 177.

<sup>28</sup> See *supra* notes 1 and 2 and accompanying text.

<sup>29</sup> Levesque, *supra* note 15, at 243.

measures and in the allocation of State resources.<sup>30</sup> The Convention reinforces this objective through its three basic underlying principles: (1) children need special legal protection beyond that afforded adults; (2) a protective and caring family setting is most conducive to a child's survival and development; and (3) adults should respect and act in the child's best interest.<sup>31</sup>

Moreover, while parental and familial involvement are still respected, they clearly play a secondary role to the relationship between the child and the State.<sup>32</sup> By enhancing the role of the State as protector, benefactor, and standard-bearer, children gain a status independent of their parents.<sup>33</sup> It is this drastic break from the previous notion that children's rights derive from their parents that reformers feel will enhance the ability of children to become fully endowed persons possessing basic human rights. The significance of this status lies in the fact that personhood continues to be a necessary prerequisite for obtaining legal rights.<sup>34</sup>

Another unprecedented aspect of the Convention is the establishment of the Committee on the Rights of the Child ("Committee") which is comprised of international experts who meet periodically to consider reports submitted by States Parties as well as to evaluate the condition of children worldwide.<sup>35</sup> By signing the Convention, member States have signified their intent not only to ensure that their domestic laws comply with the Convention's standards, but also to enforce these laws.<sup>36</sup>

States' reports must therefore outline what domestic measures have been adopted in accordance with the Convention and to what extent progress is being made toward full realization of those rights.<sup>37</sup> Based on the information received in these reports, the Committee in turn makes "suggestions and recommendations" for action on behalf of children;<sup>38</sup> the Committee's findings are subsequently published and made widely

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<sup>30</sup> Roger J.R. Levesque, *International Children's Rights Grow Up: Implications for American Jurisprudence and Domestic Policy*, 24 CAL. W. INT'L L.J. 193, 213 (1994).

<sup>31</sup> *Id.* at 214.

<sup>32</sup> *Id.* at 214.

<sup>33</sup> Levesque, *supra* note 15, at 278.

<sup>34</sup> *Id.* at 243.

<sup>35</sup> Jupp, *supra* note 2, at 15.

<sup>36</sup> *Id.* at 22.

<sup>37</sup> McSweeney, *supra* note 5, at 483. Interestingly, the Committee adopted reporting guidelines which describe generally the information States Parties should submit; consequently, the type of information to be included in the reports is left up to the sole discretion of the submitting Party. *Id.* at 484.

<sup>38</sup> Convention, *supra* note 1, art. 45(d) at 172.

available.<sup>39</sup> Thus, the objective of the Committee is to foster cooperation not through a confrontational atmosphere of denunciation, but rather by placing emphasis on promoting and assisting States Parties' compliance instead of penalizing them for failing to do so.<sup>40</sup> Some of the Convention's provisions regarding the Committee are further considered innovative for a human rights treaty in that specialized agencies of the United Nations and non-governmental organizations are allowed a role in fostering compliance with the Convention.<sup>41</sup>

### B. *Child Abuse and Cross-Cultural Considerations*

Child maltreatment is a problem that has persisted throughout history, yet it has only been in recent decades that the concept of child abuse has been recognized internationally.<sup>42</sup> In the early 1960s, child abuse first became an issue of public and professional concern in the United States; shortly thereafter the problem began to be recognized in other societies around the world.<sup>43</sup> Owing to the cross-cultural variability in child rearing beliefs and behavior, however, a universal definition for optimal child care and child abuse has still not been attained despite an increasing awareness of the problem as well as continued growth in the international literature on child maltreatment.<sup>44</sup>

Nonetheless, certain general observations about child abuse can be made, and they provide a starting point for an analysis of how well Hong Kong, China, Singapore, and Indonesia are complying with Article 19 of the Convention. Under Article 19, the State is obligated to protect children

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<sup>39</sup> Jupp, *supra* note 2, at 15.

<sup>40</sup> Cara Finan, *Convention on the Rights of the Child: A Potentially Effective Remedy in Cases of International Child Abduction*, 34 SANTA CLARA L. REV. 1007, 1025 (1994).

<sup>41</sup> LEBLANC, *supra* note 4, at xxi.

<sup>42</sup> Carolyn French, *Child Abuse: The Development of Competing Paradigms*, 27 INT'L. SOC. WORK 1, 1 (1984).

<sup>43</sup> Jill Korbin, *Cross-Cultural Perspectives and Research Directions for the 21st Century*, 15 CHILD ABUSE & NEGLECT 67, 67 (1991). The phenomenon of child abuse was first reported in an article published by Dr. C. Henry Kempe which identified the "battered-child syndrome." *Freedom from Abuse*, *supra* note 10, at 606.

<sup>44</sup> Korbin, *supra* note 43, at 68. Indeed, what is viewed as abusive in one culture may actually be a culturally accepted child rearing practice in another. KAY KYUNG-SOOK SONG, *DEFINING CHILD ABUSE: KOREAN COMMUNITY STUDY* 17 (1994). A number of proposals have been set forth as possible universal definitions, however; for example: "Child abuse is the portion of harm to children that results from human action that is proscribed, proximate, and preventable." David Finkelhor and Jill Korbin, *Child Abuse as an International Issue*, 12 CHILD ABUSE & NEGLECT 3, 4 (1988).



from all forms of abuse, neglect and exploitation by parents or others.<sup>45</sup> In addition, States must undertake preventive and treatment programs to this end.<sup>46</sup> Since this Comment's primary focus is assaults on children in the domestic setting,<sup>47</sup> following is a discussion of what constitutes such abuse.

Abuse by assault can be defined as any intentional act which directly harms the child, regardless of whether the resulting harm is physical or emotional.<sup>48</sup> This type of abuse generally tends to occur in situations where the conduct of a person in authority, such as a parent, guardian, or teacher, is aimed at disciplining or controlling the behavior of the child.<sup>49</sup> Physical abuse can be further defined as "violence and other nonaccidental, proscribed human actions that inflict pain on a child and are capable of causing injury or permanent impairment to development or functioning."<sup>50</sup>

Although these definitions can be applied in an international context, it is important to bear in mind that the varying political, social, economic, and cultural aspects of each of the countries studied influences the level of awareness of child abuse in each.<sup>51</sup> Many countries have been reluctant to acknowledge the existence of child abuse as a problem, due in part to the broad differences in culturally accepted practices.<sup>52</sup> Moreover, the extent and method of reporting within a country play a crucial role in the level of awareness. Indeed, the magnitude of the problem of child abuse in all levels of society was not realized until improved reporting procedures developed.<sup>53</sup> It is also critical to remember, however, that a lack of published or documented cases of abuse does not necessarily denote an absence of the problem within a given country.<sup>54</sup>

While it is clear that Article 19 of the Convention guarantees a child's right to protection from abuse,<sup>55</sup> the Convention does not detail the specific

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<sup>45</sup> Convention, *supra* note 1, art. 19(1) at 169.

<sup>46</sup> *Id.* at art. 19(2) at 169.

<sup>47</sup> See *supra* note 10 and accompanying text.

<sup>48</sup> This definition derives from Cohen's category "general abuse." *Freedom from Abuse*, *supra* note 10, at 628.

<sup>49</sup> *Id.*

<sup>50</sup> Finkelhor & Korbin, *supra* note 44, at 8.

<sup>51</sup> RICHARD GELLES & CLAIRE PEDRICK CORNELL, INTERNATIONAL PERSPECTIVES ON FAMILY VIOLENCE 3 (1983).

<sup>52</sup> *Freedom from Abuse*, *supra* note 10, at 605. The spectrum ranges from countries where vigorous physical discipline is both common and often regarded as actively desirable, to others where it is illegal for anyone to strike a child. *Id.*

<sup>53</sup> KAY CASTELLE, IN THE CHILD'S BEST INTEREST: A PRIMER ON THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD 23 (3d ed. 1990).

<sup>54</sup> Korbin, *supra* note 43, at 67.

<sup>55</sup> See *supra* note 7 and accompanying text.

acts that constitute abuse.<sup>56</sup> Given the difficulty in identifying an internationally acceptable definition of child abuse which is flexible enough to apply to a variety of situations across numerous cultural contexts, it is not surprising that the Convention lacks a precise definition. Local definitions and priorities play a significant role in whether a country even recognizes child abuse as a serious problem,<sup>57</sup> thus the Convention intentionally utilizes constitutive language in order to leave its provisions open to interpretation.<sup>58</sup>

This interpretation operates on two levels: first, each State Party must interpret the standards of the Convention and determine if its domestic policies conform; next, the Committee must evaluate the State Party's interpretation.<sup>59</sup> Despite the cultural glosses inherent in these portrayals of the problem, however, a general consensus appears to exist that the intentional physical injury of a child is deplorable.<sup>60</sup> In addition, all cultures have criteria for identifying those behaviors which exceed the limit of culturally acceptable treatment of children.<sup>61</sup> The problem of child abuse is undoubtedly a worldwide phenomenon about which international concern is continuing to grow; thus, the difficult task lies in escaping one's own cultural biases when analyzing other countries' definitions and approaches to the problem.

### III. ANALYSIS

In evaluating the cultural limits imposed by a society on child maltreatment, one must attempt to discern not only the actual amount of abuse that occurs within a country, but also how well the laws are enforced, to what extent the laws are effective in preventing abuse, and whether child abuse reporting is handled through institutional mechanisms. Since the fine line between child discipline and abuse presents an area of consideration that is especially subject to cultural relativism, the following case studies incorporate this issue into each analysis.

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<sup>56</sup> Cynthia Price Cohen, *The Developing Jurisprudence of the Rights of the Child*, 6 ST. THOM. L. REV. 1, 5 (1993) [hereinafter *Developing Jurisprudence*].

<sup>57</sup> Richard Gelles & Claire Pedrick Cornell, *International Perspectives on Child Abuse*, 7 CHILD ABUSE & NEGLECT 375, 377 (1983).

<sup>58</sup> *Developing Jurisprudence*, *supra* note 56, at 5.

<sup>59</sup> *Id.* at 6.

<sup>60</sup> *Freedom from Abuse*, *supra* note 10, at 605.

<sup>61</sup> Korbin, *supra* note 43, at 69.

### A. *Case Studies*

While the following examination is intended to follow similar guidelines for each country, it should be noted that some materials were not available for inclusion in the analysis of certain countries' laws and practices. The general method, however, is to give a limited demographic summary of each country followed by a discussion of its child abuse statutes and general treatment of the problem. The reports of the country submitted to the Committee and other relevant matters such as the Committee's responses and suggestions are also examined.

Importantly, five developmental stages that countries progress through in dealing with the problem of child maltreatment have been identified: Stage One is denial of the problem; in Stage Two, a country pays attention to the more "sensational and lurid" aspects of abuse; Stage Three is denoted by physical abuse being better handled and issues such as failure to thrive being considered; Stage Four is signified by the recognition of emotional abuse and neglect; and in Stage Five, concentration is placed on the problem of sexual abuse.<sup>62</sup> Thus, attention is also given to determining which stage each country has reached.

#### 1. *Hong Kong*

On September 7, 1994, the Convention became binding on the British Crown Colony of Hong Kong.<sup>63</sup> Pursuant to a declaration made by the United Kingdom upon deposit of its ratification instrument, the Convention

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<sup>62</sup> C. Henry Kempe, *Recent Developments in the Field of Child Abuse*, 2 CHILD ABUSE & NEGLECT 261, 262-63 (1978).

<sup>63</sup> *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, U.N. Committee on the Rights of the Child, at 36, U.N. Doc. CRC/C/2/Rev.5 (1996) [hereinafter *Reservations, Declarations, and Objections*]. That Hong Kong will return to Chinese control on July 1, 1997, should not have significant implications for this analysis. Since China is Party to the Convention, Hong Kong's obligations under the Convention will continue; thus, no immediate impact on how Hong Kong deals with the issue of child abuse nor the level of awareness of the problem should be observed directly after July 1, 1997. According to Article 8 of the Hong Kong Basic Law, those laws currently in force in Hong Kong will be maintained. Gongheguo Xianggang Tebie Xingzhengqu Jibenfa [People's Republic of China Hong Kong Special Administrative Region Basic Law], of 1990, art. 8, translated in THE HONG KONG BASIC LAW: BLUEPRINT FOR 'STABILITY AND PROSPERITY' UNDER CHINESE SOVEREIGNTY 169 (Ming K. Chan & David J. Clark eds., 1981) [hereinafter BASIC LAW]. Furthermore, if China were to withdraw from the Convention, according to Article 153 of the Basic Law Hong Kong may remain a party to the Convention. BASIC LAW, *supra*, at 200-01.

was extended to Hong Kong through a subsequent declaration filed almost three years after the United Kingdom ratified the Convention.<sup>64</sup> Hong Kong citizens are subject to all provisions of the Convention just as any of the other States Parties, and children within the territory are likewise afforded all the rights granted by the Convention.<sup>65</sup>

The British dependent territory of Hong Kong is situated on the southern coast of China, so it is not surprising that ninety-eight percent of its population is Chinese.<sup>66</sup> Moreover, while English is widely spoken, Chinese is the official language of the colony and a majority of residents are Buddhist.<sup>67</sup> Of the four countries considered here, Hong Kong is the most densely populated.<sup>68</sup> Home to the largest container port in the world,<sup>69</sup> Hong Kong is the world's biggest exporter of clothing and the tenth largest trader in the global economy. The success of its capitalist economy is based on manufacturing, banking and commerce.<sup>70</sup>

a. *Legal and cultural perceptions of child abuse*

Given its proximity to China and the extensive influence of Chinese culture in Hong Kong's language and predominant religion, it is not surprising that traditional Chinese values pervade Hong Kong's culture. This influence is also prevalent in Hong Kong's cultural disposition toward child abuse.<sup>71</sup> Importantly, the conventional attitude toward discipline in Hong Kong complicates an analysis of child abuse perceptions since the Chinese have traditionally viewed physical punishment as an important component of child rearing once a child reaches the age of four or five.<sup>72</sup> Nonetheless, public awareness that child maltreatment is a problem in Hong

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<sup>64</sup> The declaration states: "[The Government of the United Kingdom reserves] the right to extend the Convention at a later date to any territory for whose international relations the Government of the United Kingdom is responsible." *Reservations, Declarations, and Objections, supra* note 63, at 34.

<sup>65</sup> Although any reservations or declarations pertaining to Hong Kong can only derive from those made by the United Kingdom. *See id.* at 36.

<sup>66</sup> OXFORD, *supra* note 11, at 117.

<sup>67</sup> Other religions include Confucianism, Taoism, Christianity, Islam, Hinduism, Sikhism, and Judaism. *Id.*

<sup>68</sup> Hong Kong's population density is 14,136 per square mile, China's 376 per square mile, Singapore's 11,803 per square mile, and Indonesia's 265 per square mile. *Id.* at 117, 114, 127, 129.

<sup>69</sup> *Id.* at 117.

<sup>70</sup> *Id.*

<sup>71</sup> *See infra* notes 76-77, 82, 88 and accompanying text.

<sup>72</sup> Garythe Samuda, *Child Discipline and Abuse in Hong Kong*, 12 CHILD ABUSE & NEGLECT 283, 286 (1988). In 1988 (and possibly still today), parents could buy small rattan sticks in the market for use in disciplining children. *Id.*

Kong has been increasing ever since local newspapers widely publicized a case of child abuse in 1977.<sup>73</sup>

The statutes on child abuse in Hong Kong are quite explicit in their condemnation of any maltreatment, and stiff penalties await those who transgress these legal norms.<sup>74</sup> Yet laws are necessarily affected by the society within which they operate. Thus, the existence of strong laws does not signify that the laws are effective in preventing child abuse. Indeed, three of the main factors in Hong Kong society which obstruct enforcement of these laws stem from the notion of filial piety, the high value placed on family secrecy, and a belief that parents are infallible.<sup>75</sup>

Ensuring that children will obey and care for their aged parents is a requirement fundamental to a filial society like Hong Kong.<sup>76</sup> As such, the

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<sup>73</sup> *Id.* at 283.

<sup>74</sup> From the report submitted to the Committee on behalf of Hong Kong:

The Protection of Children and Juveniles Ordinance (Chapter 213) empowers the court to grant a care or supervision order in respect of a child or juvenile who has been abused . . . . The Director of Social Welfare is appointed as the legal guardian under such an order, and the child is committed to the care of a person or institution fit to take care of him or the supervision of a social welfare officer. Alternatively, the parent or guardian can be ordered to enter into a recognisance to exercise proper care and guardianship. The Ordinance also provides for an emergency order under which an authorised officer can search any place with a view to the removal and taking into care of any child or juvenile who appears to be in need of care or protection. Such an order can also authorise the taking of such a child to a place for medical, psychological or social assessment.

*Consideration of Reports Submitted by States Parties Under Article 44 of the Convention (United Kingdom of Great Britain and Northern Ireland Supplementary Report on the Dependent Territories: Hong Kong)*, U.N. Committee on the Rights of the Child, ¶ 56, U.N. Doc. CRC/C/11/Add.9 (1996) [hereinafter *Hong Kong Report*]. The Public Education Sub-Committee on Child Abuse which is under the direction of the Hong Kong Government's multi-disciplinary Working Group on Child Abuse has also issued a "Guide to the Identification of Child Abuse." *Id.* ¶ 199. The Guide defines child abuse as "any act of omission or commission that endangers or impairs a child's physical, psychological or emotional health and development." *Id.* It further states that child abuse may occur at the hands of a parent, other relative, teacher or childminder entrusted with the care or control of children. *Id.* Abuse is classified into four major categories (Physical Abuse, Gross Neglect, Sexual Abuse, and Psychological Abuse); the relevant classification for this Comment is Physical Abuse which is defined as "non-accidental use of force, burning or poisoning." *Id.* ¶ 199. The Offences Against the Person Ordinance (Chapter 212) provides:

Any person over the age of 16 years who has the custody, charge or care of any child under that age is guilty of an offence if he or she wilfully assaults, [or] ill-treats . . . the child or causes the child to be assaulted, [or] ill-treated . . . in a manner likely to cause the child unnecessary suffering or injury to his or her health.

*Id.* ¶ 214. The maximum penalty for an offence under this Ordinance is ten years imprisonment on conviction on indictment and three years imprisonment on summary conviction. *Id.* ¶ 216. Also, see *infra* note 114 for a discussion of the effects English common law has had on Hong Kong's jurisprudence.

<sup>75</sup> See *infra* notes 76-77, 82, 88 and accompanying text.

<sup>76</sup> Samuda, *supra* note 72, at 283.

standards for child care and discipline have developed around this anticipated role children are expected to assume as adults.<sup>77</sup> Since filial piety is the predominant guiding principle for socializing children, it is not surprising that absolute authority over children is the commonly accepted approach to child rearing.<sup>78</sup>

Owing to this expectation that children should obey and respect their parents without question, difficulties arise in the management of discipline-related injuries.<sup>79</sup> One study revealed that medical and paramedical caseworkers often have trouble reaching a consensus about whether a certain child has been abused.<sup>80</sup> Thus, even though broad guidelines for the recognition and management of child maltreatment have been developed in Hong Kong, a child's injuries may be classified as resulting from acceptable discipline rather than abuse which crossed the bounds of allowable conduct.

The problem is compounded by the fact that many of these cases may never reach the purview of authorities. Indeed, children may only be seen by professionals in those cases where culturally acceptable discipline has been excessive.<sup>81</sup> Moreover, traditional Chinese are inclined to maintain secrets within the family, so frequently it is only during a period of intense marital conflict that a parent may bring the abuse to the attention of authorities, despite the fact that the abuse may have been occurring for quite some time.<sup>82</sup> A rise in the referral rate by family members, however, does indicate that there is a growing community awareness of child abuse.<sup>83</sup>

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<sup>77</sup> *Id.*

<sup>78</sup> Ting-Pong Ho & Wai-Ming Kwok, *Child Sexual Abuse in Hong Kong*, 15 CHILD ABUSE & NEGLECT 597, 599 (1991). "The Chinese pattern of child rearing is characterized by an initial period of permissiveness followed by strict discipline and a demand for unquestioned obedience." *Id.* Moreover, in classic Chinese children's stories such as the classic 24 stories of filial piety, defiance of parental authority leads to admonition, punishment, or death for the disobedient child. *Id.*

<sup>79</sup> Samuda, *supra* note 72, at 284.

<sup>80</sup> *Id.* In one case, a nine-year-old girl's injuries consisted of more than 100 cane marks and bruises, yet many of the caseworkers felt that the disciplinary action had been appropriate in the circumstance (the child had stolen a significant amount of money from her sister who acted as mother surrogate since their mother had died). Much discussion ensued before the case was eventually defined as child abuse. *Id.*

<sup>81</sup> *Id.* at 287. In a survey of 100 unmarried university students between the ages of 22 and 31, 78% of the respondents reported they had seen children who were either neighbors, friends, or relatives with marks, bruises, or other injuries after being hit. *Id.* at 286. The study further indicated that beating is a widely used form of child discipline. *Id.*

<sup>82</sup> *Id.* at 284. Importantly, the prime motive for reporting may actually be to punish the abusing parent or to document the behavior for further use at a custodial hearing. *Id.* Thus, it might be concluded that a large number of children who are suffering abuse may never have their cases brought to the attention of professionals.

<sup>83</sup> *Id.* Under section 2 of the Offences Against the Person Ordinance (Chapter 212), the number of reported cases of child ill-treatment or neglect in 1989 was 74, with 72 arrested, and the number had risen

Despite the close proximity in which Hong Kong families live, there is also a reluctance by neighbors to criticize or become involved with the authorities even though they may be aware of abusive behavior.<sup>84</sup> This pattern further reflects the importance placed on family integrity and secrecy as well as a view that parents are incapable of error.<sup>85</sup> Child rearing is considered a private matter in Hong Kong,<sup>86</sup> thus interference by the law within the home is regarded with hostility by many people since it is interpreted by parents to mean that their child rearing practices are unfit.<sup>87</sup> Granted, parents in many cultures may regard this direction by the law on child rearing as inappropriate, yet in Hong Kong it faces even more opposition since parents have been traditionally regarded as infallible.<sup>88</sup>

b. *The Convention*

Since the Convention requires that the State take active measures to guarantee children's rights while diminishing the reliance on parental assurance of these rights,<sup>89</sup> the implications for application of the Convention in Hong Kong are readily apparent given the near-absolute authority parents are allowed. Family relations are already difficult to regulate in Hong Kong owing to the fact that such issues are viewed as "domestic" and largely outside state control.<sup>90</sup> In addition, even though

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to 109 by 1994, with 104 arrested (note: not all of these referrals were necessarily by family members of an abused child). *Hong Kong Report*, *supra* note 74, ¶ 215. In 1995, 575 cases of child abuse were reported, which represented a 28% increase from 1994. *Child Abuse on the Rise in HK*, XINHUA NEWS AGENCY, Mar. 4, 1996, available in LEXIS, World Library, ALLWLD file. Moreover, the total number of reported child sexual abuse cases has increased substantially from 1990 to 1994: in 1990, 462 total cases of child abuse were reported with 9 (2%) being sexual abuse cases, and in 1994 the total was 450 child abuse cases with 77 (17%) being cases of sexual abuse. *Hong Kong Report*, *supra* note 74, ¶ 447.

<sup>84</sup> Of the cases referred to Queen Mary Hospital reported in one study, only 17% of referrals came from neighbors, while 13% were from teachers, 11% from medical staff, 5% from the police, and self-referrals accounted for 4%. Samuda, *supra* note 72, at 284.

<sup>85</sup> See *infra* notes 86 and 88 and accompanying text.

<sup>86</sup> This view that family privacy is a concern for the private domain is reflected in Article 14 of the Hong Kong Bill of Rights Ordinance: "(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation." B. Rwezaura, *The Legal and Cultural Context of Children's Rights in Hong Kong*, 24 HONG KONG L.J. 276, 279 n.15 (1994).

<sup>87</sup> *Id.* at 288. The parent may also feel that his personal right has been trespassed upon, thus his reaction will be to resist such intervention rather than deal with the problem in a straightforward manner. *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> See *supra* notes 30 and 32 and accompanying text.

<sup>90</sup> Rwezaura, *supra* note 86, at 286.

Hong Kong courts have held that Chinese customary law is subordinate to concerns over the welfare of the child, it is difficult for a court to ignore some aspects of Chinese custom, especially where a case involves a Chinese child in a Chinese environment.<sup>91</sup> Thus it appears that the Government is sure to face resistance as children's rights are moved into a status independent of parents' rights.

Of course, the intermixing of cultures in Hong Kong has had some effect on traditional child rearing practices.<sup>92</sup> A survey on *Young People's Perception of Family* from 1993 revealed that a majority of respondents would disregard their family's desires in making decisions, and only one third of those surveyed believed either parent was a good role model.<sup>93</sup> While young people may be beginning to move away from their parent's dominating influence, there still remains a perception that parental rights prevail over those of children.<sup>94</sup> Furthermore, there is nothing to indicate that the traditional use of physical punishment is subsiding in Hong Kong.<sup>95</sup>

However, in the report submitted to the Committee on behalf of Hong Kong,<sup>96</sup> there is ample evidence to suggest that Hong Kong is complying with both the legislative and institutional requirements of Article 19.<sup>97</sup>

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<sup>91</sup> *Id.* at 287 n.55.

<sup>92</sup> Although a 1988 study showed that a majority (88.9%) of respondents affirmed that filial piety was essential for a good society, there is also evidence to suggest that modern fathers are for the most part less authoritarian than their own fathers. *Id.* at 286-87.

<sup>93</sup> *Id.* at 289. Note that the author of the article points out that these trends are not conclusive, and further study would be required to determine the direction of social change.

<sup>94</sup> *See id.* at 288 n.59, referring to a Government decision that it was neither desirable nor feasible to introduce legislation which would discourage parents and other persons in charge of children from leaving their children unattended for long periods. Enactment of such an Ordinance was strongly resisted by parents. *Id.* at 288.

<sup>95</sup> *See supra* note 83.

<sup>96</sup> The United Kingdom is actually responsible for submitting the required reports under the Convention. *Hong Kong Report, supra* note 74, ¶ 24.

<sup>97</sup> *See supra* note 74. In accordance with the requirement of Article 19 that protective measures should include establishment of social programs and other procedures for prevention, Hong Kong is accomplishing this through various measures: for example, the "Guide to the Identification of Child Abuse" issued by the Working Group on Child Abuse has been "widely distributed to front-line professionals of various disciplines, including teachers, social workers, medical practitioners, child care centre staff and police officers." *Hong Kong Report, supra* note 74, ¶ 202. Training programs, talks and seminars are also organized for these professionals in order to help them identify signs and symptoms of child maltreatment. *Id.*; *see also id.* ¶ 207. The Working Group on Child Abuse continues to work on developing improved procedures for reporting, recording, and handling of child abuse cases. *Id.* ¶ 201. After a case of child abuse is reported, a multi-disciplinary case conference is held to determine what long-term welfare plan should be adopted for the child; participants include social workers, doctors, teachers, and police officers. *Id.* ¶ 203. If it is determined that the child should be removed from the home, the child will be placed in residential care. *Id.* ¶¶ 203-04, ¶¶ 173-81. Additionally, there is an extensive program designed to reintegrate abused children into society; components of these services include



Moreover, Hong Kong seems to be at the fifth stage of development where the problem of child sexual abuse begins to be addressed, giving evidence that there is a high level of awareness about the problem of child maltreatment.<sup>98</sup> Nevertheless, serious questions remain as to whether this high level of awareness coupled with compliance under Article 19 will be enough to bring about improved protection for children from abuse.<sup>99</sup> For it is not only Hong Kong's laws that must be restructured to accommodate a new concept of children's rights set forth by the Convention, but also its cultural attitudes.<sup>100</sup> Indeed, it may be the latter which proves to be the more resistant of the two.

## 2. *China*

The People's Republic of China is not only the most populous country in the world, but also the third largest country in area after Russia and Canada.<sup>101</sup> Despite its large size, though, China has been geographically isolated from the rest of the world for much of history.<sup>102</sup> It was not until modern times that China began to have frequent contact with other civilizations; as a result, its culture and society have developed in an

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psychological or psychiatric counseling, individual and family counseling, medical or psychiatric treatment is provided if necessary, and therapeutic treatment to children in need is provided by twenty clinical psychologists under the Social Welfare Department. *Id.* ¶ 213. A computerized data base was also developed by the Social Welfare Department and is useful for case-checking and timely intervention in child abuse incidents. *Id.* ¶ 205. Finally, the Criminal Procedure Ordinance (Chapter 221) requires that cases involving child abuse victims be given priority listing when those victims have to appear as witnesses in court; if delay is unavoidable, a Magistrate may take a written deposition from the child. *Id.* ¶ 60. Aside from the child protection services unit of the Social Welfare Department, a non-governmental organization known as the Against Child Abuse Agency helps in the management of child abuse cases. Ho & Kwok, *supra* note 78, at 597.

<sup>98</sup> See *supra* note 62 and accompanying text. This conclusion is based on not only the figures reported in *supra* note 83, but also by the fact that a significant portion of Hong Kong's report submitted to the Committee dealt with child sexual abuse. See *Hong Kong Report*, *supra* note 74, ¶¶ 446-51 as well as various references in *supra* notes 74, 83 and 97.

<sup>99</sup> The Committee's preliminary observations recommend that Hong Kong set up a commission to monitor and implement children's rights; among the concerns listed by the Commission was Hong Kong's measures regarding child abuse. Elisabeth Tacey, *Children's Rights Rebuff*, S. CHINA MORNING POST, Oct. 13, 1996, at 2, available in LEXIS, World Library, ALLWLD file.

<sup>100</sup> See generally Rwezaura, *supra* note 86. The author argues that the statutes governing the legal status of children and the family in Hong Kong were not intended to address the emerging concept of children's rights. *Id.* at 277. A further conclusion is made that even if the laws are changed, the social and cultural context of Hong Kong would have to adjust as well. *Id.* Another observation is that "children's rights" may not be well received in Hong Kong because the concept may be viewed as potentially undermining harmony and leading to discord in the family. *Id.* at 289.

<sup>101</sup> OXFORD, *supra* note 11, at 113.

<sup>102</sup> *Id.*

individualized manner.<sup>103</sup> China is distinct from the other countries analyzed here as well in that it is the only single-party Communist republic of the four.<sup>104</sup>

The predominant ethnic group in China is the Han Chinese, accounting for ninety-two percent of the population, while another fifty-five minority groups comprise the remaining eight percent.<sup>105</sup> Although the Communist Government has discouraged the practice of religion, some of the traditional belief systems are still prevalent; the most predominant of these is Confucianism.<sup>106</sup> Mandarin Chinese is the official language of the country;<sup>107</sup> a majority of people live in the countryside, and agriculture is one of the mainstays of China's economy.<sup>108</sup> Moreover, minors comprise one third of the total population of China,<sup>109</sup> with eighty percent of these children living in the countryside.<sup>110</sup>

China deposited its instrument of ratification with the Secretary General of the United Nations on March 2, 1992, and the Convention entered into force for China on the thirtieth day after its deposit.<sup>111</sup> Since becoming party to the Convention, China has submitted an initial report<sup>112</sup> to the Committee outlining its progress in implementing the Convention, and the Committee subsequently issued its concluding observations<sup>113</sup> regarding this report.

*a. Legal and cultural perceptions of child abuse*

Despite the common ethnic heritage of China and Hong Kong, vast differences can be observed in how each country approaches the problem of

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 114.

<sup>105</sup> *Id.*

<sup>106</sup> 20% of the population considers itself Confucian (officially atheist), while 6% are Buddhist, 2% Taoist, 2% Muslim, and less than 1% Christian. *Id.* at 114.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Consideration of Reports Submitted by States Parties Under Article 44 of the Covenant [sic] (China)*, U.N. Committee on the Rights of the Child, ¶ 3, U.N. Doc. CRC/C/11/Add.7 (1995) [hereinafter *Chinese Report*]. A minor is defined as a citizen under 18 years of age. *Id.* ¶ 17.

<sup>110</sup> *Id.* ¶ 133.

<sup>111</sup> Convention, *supra* note 1, art. 49 at 172; *Reservations, Declarations, and Objections*, *supra* note 63, at 2. Interestingly, China was a co-sponsor of the draft resolution calling for adoption of the Convention in 1989. *Chinese Report*, *supra* note 109, ¶ 1.

<sup>112</sup> See *supra* note 109.

<sup>113</sup> *Report on the Twelfth Session*, U.N. Committee on the Rights of the Child, U.N. Doc. CRC/C/54 (1996) [hereinafter *CRC Twelfth Session*].

child abuse. This, of course, is due in large part to the fact that China is governed solely by its domestic Government, while Hong Kong has derived much of its jurisprudence and legal traditions in the area of children's rights from English common law.<sup>114</sup> This divergence can also be attributed to the differing levels of prosperity in each country.<sup>115</sup>

Nonetheless, the two countries are similar in that parents in China enjoy a status of respect similar to that of their Hong Kong counterparts.<sup>116</sup> In accordance with Chinese custom as well as a duty under the Constitution, parents in China are expected to take responsibility for the majority of their children's upbringing.<sup>117</sup> In return, children are to honor and obey their parents; this respect for one's parents is so ingrained in the culture that it has been incorporated into the official standards of Daily Conduct for primary and middle school students.<sup>118</sup>

Interestingly, the parents' responsibility to raise and educate their children properly derives not only from a concern for the welfare of children, but it is also accepted as an obligation owed to society.<sup>119</sup> Thus, while children are no longer considered private property, the overtones of socialist doctrine can be discerned in the belief that children are "successors to the construction of the country and as assets of the whole society."<sup>120</sup>

Despite this clear emphasis on ensuring the proper upbringing of children, however, the statutes and policies concerning child abuse are set forth in a very generalized fashion with relatively little substance. While Article 8 of the Protection of Minors Act states that parents or other

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<sup>114</sup> Rwezaura, *supra* note 86, at 283. Most statutes concerning Hong Kong children are based on English statutory law, and developments in recent case law are closely followed. *Id.* at 285. Rwezaura also claims that there is "little probability that the law of the child in Hong Kong would stride well past that of Britain." *Id.* See also *id.* (noting that Hong Kong courts apply English common law in determining issues of guardianship and other matters relating to children).

<sup>115</sup> See *supra* note 11. See also *infra* notes 139-143 and accompanying text.

<sup>116</sup> See *supra* note 76 and accompanying text.

<sup>117</sup> *Chinese Report, supra* note 109, ¶ 81. The Constitution of the People's Republic of China states that "Parents have the duty to rear and educate their children who are minors, and children who have come of age have the duty to support and assist their parents." ZHONGHUA RENMIN GONGHEGUO XIANFA [P.R.C. CONST.], art. 49, translated in THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA, 1979-1982, 14 (1987) (compiled by The Legislative Affairs Commission of the Standing Committee of the National People's Congress of the People's Republic of China). This duty is reiterated in Article 15 of The Marriage Law of the People's Republic of China. Zhonghua Renmin Gongheguo Hunyinfā [P.R.C. Marriage Law] art. 15 (1981) (unofficial translation distributed by the China Publications Center).

<sup>118</sup> *Chinese Report, supra* note 109, ¶ 195.

<sup>119</sup> I ANNA MAMALAKIS PAPPAS, LAW AND THE STATUS OF THE CHILD 73 (1983).

<sup>120</sup> *Id.* Even prior to the Communists coming to power in 1949, this ideal was exemplified in the Soviet Republic of China's 1931 Regulations on Marriage, which described children as "the future masters of the new society" and as such should be accorded a higher priority for care and protection. *Id.* at 71.

guardians “must not ill-treat or abandon minors,”<sup>121</sup> there is little else in the Chinese Report to the Committee which indicates how maltreatment is defined or identified. Moreover, the section of the Chinese Report pertaining to prevention of abuse and neglect outlines that the use of corporal punishment, disguised corporal punishment, or other conduct injurious to human dignity is strictly prohibited for teaching staffs at kindergartens and schools;<sup>122</sup> there is no indication, however, that this proscription applies equally to parents.

Nonetheless, punishment is mandated by the Penal Code for cases of severe maltreatment by one member of a family toward another.<sup>123</sup> Since no official figures are provided, however, it is impossible to discern how often this legislation is invoked. Interestingly, in an interview with a high-ranking Chinese expert on juvenile delinquency, the official stated that in severe abuse cases, the parent’s name may be published in a local newspaper which is considered “very hard punishment in China” since the person will lose face.<sup>124</sup> Of course, this comment further highlights questions regarding how frequently the Penal Code penalties are employed since they are supposed to apply in “serious” cases.<sup>125</sup> For less severe cases of abuse, the transgression is often handled through mediation or punishment by neighborhood committees.<sup>126</sup>

The Government does assert, however, that as living standards have increased, so has the “degree of respect and consideration children enjoy both within the family and in society.”<sup>127</sup> Apparently, this rising level of regard for children is accompanied by a correspondingly low level of maltreatment:

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<sup>121</sup> *Chinese Report*, *supra* note 109, ¶ 82.

<sup>122</sup> *Id.* ¶ 104.

<sup>123</sup> The provision states specifically:

Article 182 of the Penal Code states that anyone who grossly ill-treats a member of his or her family shall be punishable by up to two years’ imprisonment, labour in detention or surveillance. If the maltreatment results in serious injury to or the death of the victim, the penalty is between two and seven years’ imprisonment.

*Id.* ¶ 105.

<sup>124</sup> Jim Schachter, *Visiting Chinese Log Time in Court; Want to See How U.S. Treats Youth Who Get in Trouble*, L.A. TIMES (San Diego County edition), May 30, 1986, § 2 (Metro), at 1, available in LEXIS, World library, ALLWLD file.

<sup>125</sup> See *supra* note 123.

<sup>126</sup> Schachter, *supra* note 124, at 1.

<sup>127</sup> *Chinese Report*, *supra* note 109, ¶ 106.

The overwhelming majority of children have happy and safe family . . . lives. There are still some extremely rare cases of children whose parents, owing to an imperfect understanding of the right way to bring up children or under the influence of bad traditions (such as favouring boys and disparaging girls) do ill-treat or humiliate them.<sup>128</sup>

In these cases, the Government and public organizations become involved and they work to prevent the child from suffering any physical or mental harm.<sup>129</sup>

The function of the Government and public organizations in this capacity is somewhat unclear, however. While the Chinese Report does not outline any Government programs or tasks undertaken by non-governmental organizations which specifically help in the prevention and identification of child abuse, there does seem to be a number of groups whose main objective is to facilitate the improved protection of children in its broadest sense.<sup>130</sup> Likewise, there seems to be no legal mechanism for removing children from an abusive domestic environment nor any facilities available in the event that they are removed.<sup>131</sup> In addition, the social reintegration of

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<sup>128</sup> *Id.* Importantly, while the one-child policy implemented by China appears to have fueled female infanticide and abandonment of unwanted children, there seems to be no literature to suggest that the one-child policy has had either a positive or negative effect on child abuse.

<sup>129</sup> The exact language states: "The Government and public organizations concerned take such cases extremely seriously, and use educative and corrective action under the law through the mass media to prevent children from coming to physical or mental harm." *Id.*

<sup>130</sup> These include the All-China Women's Federation, which set up a women's and children's welfare department; and the Chinese People's National Committee for the Defence of Children, which receives input from areas such as health, education, science, art, literature, law, sports, social welfare, religion, nationality, feminists, youth, and trade unions. PAPPAS, *supra* note 119, at 72. The State Council Committee on Women and Children was established in 1990, which, among other duties, is responsible for overseeing implementation of the Convention and offering policy suggestions with regard to this task. *Chinese Report, supra* note 109, ¶ 10. A committee on women and young people has been set up by the Chinese People's Political Consultative Committee of the National People's Congress; and the Internal Affairs and Judiciary Committee of the National People's Congress has established an ad hoc group of professionals to work with women and children on matters of a legal nature, including proposing legislation and investigating the enforcement of current laws relating to women and children. *Id.* ¶¶ 8-9. None of these groups, however, seems to be focused specifically on the problem of child abuse (it seems logical to conclude that if they do concentrate on child abuse, or if other such groups exist which do, it would have been included in the Chinese Report).

<sup>131</sup> The section of the Chinese Report dealing with children deprived of a family environment emphasizes more those public care institutions that accommodate the needs of orphans. *Id.* ¶¶ 92-96. And the child-welfare facility established by the Department of Civil Administration is provided for vagrant, beggar and runaway minors who cannot be immediately returned to their parents or guardian for some reason. *Id.* ¶ 107. Although Article 12 of the Law on the Protection of Minors does stipulate that:

children focuses on the problem as it relates to juvenile delinquents<sup>132</sup> rather than to victims of child abuse who might have been taken out of hostile domestic settings.<sup>133</sup>

*b. The Convention*

The Committee's concluding observations to China suggest that further attention should be given to evaluating the effectiveness of those procedures pertaining to the presentation and investigation of children's complaints of abuse.<sup>134</sup> The Committee specifically notes that domestic violence may be a possible source of such transgressions.<sup>135</sup> Clearly, China is in the early stages of addressing the problem of child abuse. Indeed, a strong case can be made that it is still in the first stage typified by denial since the second stage is characterized by early intervention when abuse is not so severe.<sup>136</sup> No mechanism seems to exist whereby early intervention can be implemented, and the level of awareness of the problem is nowhere near as high as in Hong Kong or Singapore.<sup>137</sup>

Whereas Hong Kong faces issues of cultural bias and tradition in dealing with the problem of child abuse and children's rights in general,<sup>138</sup> China's limited recognition of the problem may stem more from socioeconomic factors. In the Chinese Report, the Government points out

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Where the parents or other guardians of minors commit any act specified in the preceding paragraph [this includes Article 8 which proscribes ill-treatment of children] and refuses to mend their ways after education, the people's court may, upon application by the person(s) or unit(s) concerned, disqualify them as guardians and designate guardians anew . . . .

THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA, 1990-1992, 293 (1993) (compiled by The Legislative Affairs Commission of the Standing Committee of the National People's Congress of the People's Republic of China).

<sup>132</sup> *Chinese Report*, *supra* note 109, ¶¶ 228-30.

<sup>133</sup> Compare Hong Kong's provisions, *supra* note 97.

<sup>134</sup> *CRC Twelfth Session*, *supra* note 113, ¶ 137.

<sup>135</sup> *Id.*

<sup>136</sup> Kempe, *supra* note 62, at 263. See also, *supra* note 62 and accompanying text. A classification of Stage 1 denial is supported by a story from United Press International which reported the death of a child who was hung by his father for playing hooky from school. The father was quoted as saying "I abused him to death. But I did it for his own good." The news story further claimed that this official recognition of child abuse was rare. *Man in China Hangs Son for Playing Truant*, U.P.I. (BC CYCLE), Nov. 16, 1992 (International), available in LEXIS, World library, ALLWLD file. The Communist Party newspaper *People's Daily* seemed to side-step the gravity of the situation altogether by reassuring parents that "happy, active and mischievous children are generally intelligent. Naughtiness is one of their special features." *Id.*

<sup>137</sup> See *supra* notes 73, 83, and 97 and *infra* notes 160-174 and accompanying text.

<sup>138</sup> See *supra* note 100 and accompanying text.

that China is still a developing country and thus large disparities exist between the level of development in cities and that of the countryside.<sup>139</sup> Consequently, child health care and malnutrition are still of major concern, so much of the Government's focus for children is placed on issues such as infant mortality,<sup>140</sup> malnutrition,<sup>141</sup> prevention of acute respiratory infections,<sup>142</sup> and immunization.<sup>143</sup>

Yet given the traditional Chinese value that anyone's child should be treated as one's own and the socialist attitude that children's all-around development is vital to the construction of the country,<sup>144</sup> it seems there should be an excellent network in place for the discovery and reporting of cases of abuse. However, the level of awareness of the problem may be much higher than official records declare, thus there are clearly other factors operating to prevent cases from being reported and the problem coming to the forefront of policy concerns. The main source of this impediment may be that the Government is more concerned with raising its children's standard of living,<sup>145</sup> thus Government programs designed to facilitate identification and resolution of the problem are a lower priority for both the budget and policy making. Consequently, citizens are not educated about the problem nor are they encouraged to disclose incidences of abuse.

Another factor may be that despite the revolutionary changes the Communist Government has brought since it came to power in 1949, five thousand years of tradition cannot be easily changed by five decades of rule. As such, it seems that many of the issues raised in the Hong Kong analysis may be applicable to the Chinese case; specifically, a tradition of family secrecy, a notion of filial piety (which is actually required by law in China),<sup>146</sup> and a belief that parents are infallible.<sup>147</sup>

Given these conclusions, compliance with Article 19 may not be possible for China until economic conditions progress and cultural attitudes develop which recognize children as rights bearers.

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<sup>139</sup> *Chinese Report, supra* 109, ¶ 157.

<sup>140</sup> *Id.* ¶ 146 (claiming that reducing infant and child mortality rates is the Department of Health's first priority), ¶ 148.

<sup>141</sup> *Id.* ¶ 149 (the second priority for the Department of Health).

<sup>142</sup> *Id.* ¶ 147.

<sup>143</sup> *Id.* ¶ 154.

<sup>144</sup> *Id.* ¶ 4.

<sup>145</sup> *See supra* notes 140-143 and accompanying text.

<sup>146</sup> *See supra* notes 82 and 117.

<sup>147</sup> *See supra* note 88 and accompanying text.

### 3. *Singapore*

The Republic of Singapore acceded to the Convention in October of 1995.<sup>148</sup> Due to its relatively recent accession, its first report to the Committee is not scheduled to be submitted until November 1997;<sup>149</sup> thus much of this analysis is drawn from the statutes presently in force in Singapore as well as scholarly materials, government publications, and the local newspaper.

Unlike Hong Kong, Singapore has remained culturally distinct from its large neighbor to the south, Indonesia, and it is clearly the most ethnically diverse of the four countries considered here. While Chinese account for a large majority of the population, the influence of Malay culture is quite prevalent owing to a significant population of Malays as well as its location in the Malay region; East Indians are the third largest ethnic group in the state.<sup>150</sup> Consistent with its cultural variation, the languages of Chinese, Malay, Tamil, and English have all been designated as official languages of Singapore.<sup>151</sup> Not surprisingly, many of the major religions are well-represented in the population; these include Buddhism, Islam, Christianity, Taoism, and Hinduism.<sup>152</sup> Despite its diverse population, however, Singaporeans' former cultures have been described as buried beneath a "Western façade."<sup>153</sup>

Similar to Hong Kong, Singapore's economy is based primarily on its vast port, manufacturing, and commercial and financial services.<sup>154</sup> By some estimates, Singapore's port is the busiest in the world today.<sup>155</sup>

#### a. *Legal and cultural perceptions of child abuse*

As in Hong Kong, the laws regarding child abuse in Singapore are explicit and penalties for violating their mandates are clear.<sup>156</sup> Guidelines

<sup>148</sup> *Reservations, Declarations, and Objections, supra* note 63, at 7.

<sup>149</sup> *Id.*

<sup>150</sup> OXFORD, *supra* note 11, at 127 (Chinese 78%, Malay 14%, and Indian 7%).

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* (Buddhist 28%, Muslim 15%, Christian 13%, Taoist 13%, Hindu 5%).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> Section 4(1) of the Children and Young Persons Act states:

If any person above the age of 14 years who has the custody, charge or care of any child, or any person above the age of 18 years who has the custody, charge or care of any young person,



for removal of children<sup>157</sup> whom the state suspects are being abused are outlined by statute,<sup>158</sup> and this power of the state extends to the point of authorizing police to search for and, if necessary, remove a child from an environment where the child is being abused.<sup>159</sup>

Given this extensive statutory detail, it is not surprising to discover that the Government as well as non-governmental organizations are active in educating the public about the problem of child abuse. One method of public education is accomplished by displaying posters throughout the Republic; one such campaign had posters which reminded people that child abuse still occurs in Singapore.<sup>160</sup> In conjunction with the launching of that campaign, a professional theater group gave a number of free performances

willfully assaults, ill-treats, neglects, abandons or exposes the child or young person or causes or procures or knowingly permits the child or young person to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause that child or young persons unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offence.

Children and Young Persons Act, ch. 38, §4(1) (1994) (Sing.) [hereinafter Children Act]. Penalties are outlined in Section 4(6):

Any person who is guilty of an offence under this section shall be liable on conviction—(a) in the case where death is caused to the child or young person, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 7 years or to both; and (b) in any other case, to a fine not exceeding \$4,000 or to imprisonment for a term not exceeding 4 years or to both.

*Id.* at §4(6).

<sup>157</sup> It is important to note that under Singapore law, a “child” refers to any person below the age of 14 years, while a “young person” means any person between the ages of 14 and 16. *Id.* at §2. For purposes of this discussion, the terms “child” and “children” will be used to refer to both classifications, unless it is necessary to draw a distinction.

<sup>158</sup> The pertinent language states:

A protector or a police officer or any person authorised by a Magistrate, protector or justice of the peace may take to a place of safety any child or young person in respect of whom any offence under this Part or any offence involving bodily injury to a child or young person has been, or there is reason to believe has been, committed.

*Id.* at §8(1). This section further details that the child will remain in a place of safety until resolution of the matter is achieved. *Id.* at §8(2)-(3). Note that “protector” includes the Director of Social Welfare, Deputy Directors and Assistant Directors of Social Welfare and other people which the Minister, after notification, declares to be a protector for purposes of the Act. *Id.* at §3. A “place of safety” is any place or institution detailed in section 27 of the Act as well as “any other suitable place the occupier of which is willing temporarily to receive a child or young person.” *Id.*

<sup>159</sup> Where there is reasonable cause to believe that a child is being abused, the Court may issue a warrant authorizing any police officer to search for the child. If it appears to the officer that the child has been or is being “assaulted, ill-treated or neglected” or any other offence has been committed against the child, the officer may take and detain the child in a place of safety. *Id.* at §10(1)(a)(b)(i). The officer may also remove the child absent a search. *Id.* at §10(1)(b)(ii).

<sup>160</sup> *No Excuse for Wilful Abuse of Children: Abdullah*, STRAITS TIMES, Oct. 16, 1994 (Home), at 24, available in LEXIS, World library, ALLWLD file [hereinafter *No Excuse*].

of a play which dealt with the effects emotional abuse and neglect can have on a child.<sup>161</sup> The Government hopes that these programs will increase public awareness and sensitivity about the problem.<sup>162</sup>

The local newspaper also acts as a medium for education. One article from *The Straits Times* titled "Has Your Child Been Abused?" explained about the two types of child abuse, emotional and physical, by detailing not only what constitutes each type of abuse, but also possible behavioral changes and symptoms which can alert someone to a case of abuse.<sup>163</sup> Another article, "How You Can Help Prevent Child Abuse," appeared after a four-year-old girl died from ill-treatment by her father.<sup>164</sup> The article outlined options for concerned relatives or neighbors who suspect a child is being abused, such as reporting the incident to police, the Ministry of Community Development, or a social worker; readers also learned what steps are taken after a case is reported and were urged to notify authorities by "go[ing] to the nearest neighbourhood police post and tell[ing] them that you suspect something is not right in that house."<sup>165</sup>

Another program which seeks to educate people about child abuse is operated by a non-government organization, the Singapore Children's Society. Throughout Singapore, numerous Family Service Centres have been set up to provide counseling by social workers on subjects such as behavioral problems of children and youth, relationship conflicts, parenting difficulties, stress management, and budgeting.<sup>166</sup> At one of the new Centres, the Singapore Children's Society has provided a reference section in the library which contains written and audio-visual material on child abuse; this program is part of the Society's effort to help the public learn

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<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> Eileen Lau, *Has Your Child Been Abused?*, STRAITS TIMES, July 18, 1992 (Home), at 30, available in LEXIS, World library, ALLWLD file.

<sup>164</sup> Ginie Teo, *How You Can Help Prevent Child Abuse*, STRAITS TIMES, July 14, 1994 (Home), at 21, available in LEXIS, World library, ALLWLD file.

<sup>165</sup> *Id.*

<sup>166</sup> As of 1996, 17 of these community-based centers have been established and the Government plans to have another 17 Family Service Centres set up over the next five years. MINISTRY OF COMMUNITY DEVELOPMENT (SING.), ANNUAL REPORT 23 (1996). These Centres are coordinated by the National Council of Social Service (NCSS) and receive Government grants for up to 50 percent of their operating costs; voluntary organizations such as the Asian Women's Welfare Association, the Singapore Indian Development Association, and the Young Women Muslim Association take responsibility for running the various Centres. Tuminah Sapawi, *Centres: More Than Just a Place for the Poor*, STRAITS TIMES, Oct. 18, 1995 (Life), at 1, L2, available in LEXIS, World library, ALLWLD file.

more about the problem, and people who desire more information will be referred to the relevant authorities.<sup>167</sup>

Much research on the problem of child abuse has also been conducted in Singapore, with two large projects being launched in 1994 by non-governmental organizations.<sup>168</sup> In 1996, a workshop on child sexual abuse was also held and organizers were hopeful that the meeting would mark the beginning of a coordinated effort between government and non-government organizations in dealing with the problem of child abuse.<sup>169</sup> The workshop launched plans for establishing child-protection teams which will be used to identify, treat, and rehabilitate neglected and abused children.<sup>170</sup> The teams will include some of the following professionals: a doctor, social worker, lawyer, nurse, teacher, adult and child psychiatrists, and a government official;<sup>171</sup> the teams will be utilized at places such as police stations, hospitals and schools, which are common points for cases of child abuse to surface or be detected.<sup>172</sup> The goal of such an approach is to provide "comprehensive care" to abused children, rather than continuing the practice of each agency working in isolation.<sup>173</sup>

Importantly, public attention to the problem of child abuse was heightened after a recent case involving the severe abuse of a five-year-old girl made headlines;<sup>174</sup> this incident may provide an additional catalyst for implementation of the child-protection-teams project as well as development of policies for handling child abuse cases. In response to

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<sup>167</sup> *Id.*

<sup>168</sup> One study sponsored by the Child Abuse Research Action Team (Carat) concentrates on how child abuse cases are being managed by social welfare agencies; the second project seeks to analyze the perceptions and definitions of child abuse among Singapore residents and is an on-going study sponsored by the Singapore Children's Society. *Two Projects on Child Abuse in Pipeline*, STRAITS TIMES, Nov. 15, 1994 (Life), at 4, available in LEXIS, World library, ALLWLD file.

<sup>169</sup> Evelyn Yap, *Child Sex Abuse: Protection Teams May be the Way*, STRAITS TIMES, Jan. 18, 1996 (Life), at 3, available in LEXIS, World library, ALLWLD file [hereinafter *Child Sex Abuse*]. See *infra* note 178 and accompanying text for a discussion of the findings of this study.

<sup>170</sup> *Child Sex Abuse*, *supra* note 169, at 3.

<sup>171</sup> *Id.* See also Evelyn Yap, *Sexually Abused Children to Get Help*, STRAITS TIMES, Jan. 21, 1996 (Home), at 24, available in LEXIS, World library, ALLWLD file (reporting that first team should be established within a year).

<sup>172</sup> *Child Sex Abuse*, *supra* note 169, at 3.

<sup>173</sup> *Id.*

<sup>174</sup> After severe beatings by her mother, the girl was left blind and retarded; given that the mother had a record of abuse, much controversy arose over why the girl had been allowed to go home with her mother after repeated hospital visits. *1996—A Year of Extremes*, STRAITS TIMES, Dec. 27, 1996, at 34, available in LEXIS, World library, ALLWLD file. The mother was sentenced to six years in jail for the abuse. *Abusive Mother "Deserves to Bear Full Brunt of the Law"*, STRAITS TIMES, Dec. 15, 1996 (Home), at 27, available in LEXIS, World library, ALLWLD file.

public outcry, the Government convened a Committee of Inquiry to investigate the procedures followed in the case by the Community Development Ministry, Singapore and Tan Tock Seng Hospitals, and the police.<sup>175</sup> The Committee will also examine how child abuse cases are presently handled by Government Ministries, the police, and hospitals as well as how their efforts can be coordinated in order to better manage cases in the future.<sup>176</sup>

Of course, the more troubling aspect of child abuse is not necessarily the cases that do make it into the headlines, but rather the hundreds that are never discovered. Singapore is similar to the other countries considered in this Comment in that fear of interfering in domestic affairs plagues efforts by concerned authorities to deal with the problem since many cases are never brought to their attention.<sup>177</sup> A survey by the Singapore Children's Society found that four in five people who were aware of a child abuse situation did not report it to authorities even though almost all respondents believed that such cases should be reported.<sup>178</sup> Clearly, the Government and other concerned groups must work not only to provide effective mechanisms for authorities to identify and deal with cases of abuse, but also to convince residents that the best interest of the child should outweigh any fears that disclosing the abuse will interfere with a troubled family's privacy.<sup>179</sup>

While it is clear that extensive legal and professional efforts are being made to combat the problem of child abuse in Singapore, it is hard to ascertain whether cultural perceptions work to blur the line between child abuse and child discipline as was seen in Hong Kong and China.<sup>180</sup> The

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<sup>175</sup> *Government to Convene Inquiry Into Winny Ho Case*, STRAITS TIMES, Oct. 11, 1996 (News Focus), at 3, available in LEXIS, World library, ALLWLD file. While Community Development Ministry officers had taken the girl away from her parents on two occasions because they suspected abuse, she was returned after the parents assured the Ministry that their daughter would be safe. *Id.* It was not until the girl was hospitalized for a third time that Ministry officials were made aware that the mother had lied about the injuries and led officials to believe that the girl was clumsy. Julie Kee, *MCD Was "Misled" Into Idea Child Was Clumsy*, STRAITS TIMES, Oct. 1, 1996 (Home), at 22, available in LEXIS, World library, ALLWLD file.

<sup>176</sup> *Committee of Inquiry Convened*, STRAITS TIMES, Nov. 3, 1996 (News Focus), at 2, available in LEXIS, World library, ALLWLD file.

<sup>177</sup> Eight social workers confirmed this fear and claimed that most people are afraid to become involved in child abuse cases because they are viewed as "domestic affairs." Teo, *supra* note 164, at 21.

<sup>178</sup> Geraldine Yeo, *Most People Who Knew of Child Abuse Kept Mum: Survey*, STRAITS TIMES, Oct. 6, 1995 (Home), at 33, available in LEXIS, World library, ALLWLD file.

<sup>179</sup> One psychiatrist commented that people are especially reluctant to report a case of child abuse where relatives are involved because if the family breaks up they do not want to be blamed. *Id.*

<sup>180</sup> See *supra* notes 72 and 79-80 and accompanying text.

ethnic diversity of Singapore may be one factor accounting for this absence,<sup>181</sup> while a strong government able to suppress much of Singaporeans' former cultures may be another.<sup>182</sup> Indeed, it may be that state-sanctioned forms of punishment influence perceptions of child abuse in Singapore much as cultural traditions do in other states. For example, in Singapore, caning is a method of punishment administered by the state for certain transgressions by both adults and youth.<sup>183</sup> Interestingly, a recent survey by the Singapore Children's Society found that slapping was considered to be more abusive than caning by a majority of respondents.<sup>184</sup> Drawing a distinction between slapping and caning seems hard to fathom by Western standards, yet given the state practice of caning it is not unreasonable to conclude that citizens have come to accept caning as a permissible form of discipline in the home.

*b. The Convention*

The condoning of corporal punishment by the Government extends to the point that upon acceding to the Convention, Singapore filed a reservation stating that it does not consider Article 19 as prohibiting "the judicious application of corporal punishment in the best interests of the child."<sup>185</sup> While the reservation does not specify whether it refers to punishment administered by the state or other actors such as teachers or parents, the Committee will undoubtedly raise serious questions about this proviso in its comments to Singapore.

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<sup>181</sup> See *supra* notes 150-153 and accompanying text.

<sup>182</sup> OXFORD, *supra* note 11, at 127. The government of Singapore has been described as "bordering on a one-party dictatorship," and under Lee Kuan Yew, the prime minister from 1959 to 1990, Singapore was essentially devoid of political debate. *Id.*

<sup>183</sup> For example, an abusive family member found guilty of certain offenses such as grievous hurt or various sexual offenses may receive caning as punishment. Debbie Ong Siew Ling, *Violence in the Family*, 15 SING. L.R. 193, 198 (1994). Many will also remember the case of the American youth sentenced to six strokes of the cane for spray-painting graffiti on cars in 1994. Ian Stewart, *Singapore: US Teenager Jailed for Car Vandalism*, S. CHINA MORNING POST, Mar. 4, 1994 (News), at 12, available in LEXIS, World library, ALLWLD file.

<sup>184</sup> Of the 400 adults who were asked what they consider to be child abuse, 71.5% responded that caning of children was acceptable while 53.8% responded that slapping a child was unacceptable. One explanation offered to explain the distinction was that slapping is often done out of anger when the parent has lost control, while caning is "usually a more considered action and is meant to discipline the child." Yvonne Chew, *Many Find Slapping Abusive: Survey*, STRAITS TIMES, June 10, 1995 (Home), at 25, available in LEXIS, World library, ALLWLD file.

<sup>185</sup> *Reservations, Declarations, and Objections*, *supra* note 63, at 30-31.

Ironically, economic factors also contribute to the problems facing Singapore in dealing with child abuse. For China, economics play a role in that the Government cannot put many resources into programs dealing with child abuse since other areas of concern for children consume Government appropriations.<sup>186</sup> For Singaporeans, on the other hand, economic prosperity had led to families where both parents must work and nannies commonly replace the extended family.<sup>187</sup> One commentator in *The Straits Times* pointed out that the influence of parents has been further diminished as that of the mass media, shopping malls and peers has increased.<sup>188</sup> Authorities in Singapore recognize that stress over financial difficulties, marital disputes and depression often manifest through child abuse and neglect,<sup>189</sup> thus the problem in Singapore is complicated further by stresses associated with a rising standard of living. Consequently, the Government may find itself in a policy juggling act: as it continues to endorse economic growth, programs which help families deal with the resulting pressures will likewise have to be strengthened.

Although Singapore has reached the fifth stage of development characterized by grappling with the problem of sexual abuse, it appears that progressing through the five stages<sup>190</sup> does not necessarily denote a better handling of the situation. Rather, enhanced awareness leads to increased entanglements between understanding and resolution. Thus, perhaps it is not surprising that as other areas of concern for children are adequately dealt with (e.g., immunization, compulsory education, etc.), the Committee can assert heightened expectations for economically advanced states in areas such as child abuse. Consequently, the Committee's feedback to Hong Kong and Singapore is able to focus more on the issue of child abuse and compliance with Article 19,<sup>191</sup> while countries like Indonesia and China escape such scrutiny at this point.

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<sup>186</sup> See *supra* note 140-143 and accompanying text.

<sup>187</sup> Sonny Yap, *If Only We Could Measure Parenting Proficiency . . .*, STRAITS TIMES, Oct. 30, 1996 (Comment/Analysis), at 38, available in LEXIS, World library, ALLWLD file.

<sup>188</sup> *Id.*

<sup>189</sup> *No Excuse*, *supra* note 160, at 24.

<sup>190</sup> For a detailing of the five stages see *supra* note 62 and accompanying text.

<sup>191</sup> Note that the Committee focuses specifically on Article 19 for Hong Kong in its Concluding Observations. See *supra* note 99.

#### 4. *Indonesia*

Of the Parties considered here, Indonesia was the earliest to ratify the Convention; the date of entry into force for Indonesia was October 5, 1990.<sup>192</sup> As such, Indonesia has already submitted two reports to the Committee and much feedback has been given to Indonesia by the Committee.

The fact that Indonesia is the largest archipelago in the world makes it the most geographically unusual of these four countries. Spanning 13,677 islands across an enormous area of tropical sea, it is surprising to discover that over half the population lives on the island of Java which represents a mere seven percent of the land area.<sup>193</sup> Similar to China, Indonesia is essentially an agricultural nation with approximately one tenth of its land being used for cultivation.<sup>194</sup> Despite four of the world's major religions being represented, Indonesia is the world's most populous Muslim nation.<sup>195</sup> The official language of Indonesia is Bahasa Indonesian, although over twenty five other languages are also spoken throughout the country.<sup>196</sup>

While Indonesia is a democratic state, the army continues to play a large role in governmental affairs.<sup>197</sup> Importantly, the five philosophical principles of *Pancasila*<sup>198</sup> provide the foundation for the nation's policies: "1. Belief in the One and Only God; 2. A Just and Civilized Humanity; 3. The Unity of Indonesia; 4. Democracy guided by the inner wisdom of deliberation of representatives; and 5. Social Justice for the whole of the Indonesian People."<sup>199</sup>

##### a. *Legal and cultural perceptions of child abuse*

Similar to China, the policy and budget emphases of the Indonesian Government are especially focused on health and nutrition concerns for

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<sup>192</sup> *Reservations, Declarations, and Objections, supra* note 63, at 6.

<sup>193</sup> OXFORD, *supra* note 11, at 128.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.* (Sunni Muslim 87%, Christian 10%, Hindu 2%, and Buddhist 1%).

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> Pancasila means "five principles" and represents an ideology that all Indonesians are expected to uphold. Jeri Laber, *Smoldering Indonesia*, N.Y. REV., Jan. 9, 1997, at 40.

<sup>199</sup> *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention (Indonesia)*, U.N. Committee on the Rights of the Child, ¶ 6, U.N. Doc. CRC/C/3/Add.10 (1993) [hereinafter *1993 Indonesian Report*].

children;<sup>200</sup> accessible education for all children is also of major importance to Indonesia's leaders.<sup>201</sup> Consequently, the information pertaining to child abuse in the 1993 Indonesian Report to the Committee is, not surprisingly, scant.

Furthermore, the content of the 1993 Indonesian Report is more akin to a constitutive document in that it outlines generalized ideas and goals while offering limited specifics about regulations and methods for implementing these objectives. Those statutes referred to in the Report are also often vague; for example, "protection" of the child is provided for in three different sections of the Indonesian Child Welfare Law, yet neither the statute nor the Report define the term protection or how it is to be ensured.<sup>202</sup>

Likewise, the section of the 1993 Indonesian Report dealing with abuse and neglect is only two paragraphs long and refers to three laws which apparently protect children against "all forms of physical, mental, violence, injury, abuse and neglect."<sup>203</sup> The statutes, however, do little to elaborate on how children are protected from these transgressions. While one of the laws referred to deals with drug abuse,<sup>204</sup> another from the Penal Code relates to penalties for anyone who surrenders a child under his control to another person for use in begging or doing dangerous or health-threatening work.<sup>205</sup> Moreover, the latter statute only applies to children under the age of twelve,<sup>206</sup> yet a child is defined as a person below the age of 21 years (unless they are married and then the age is 16 for girls and 19 for boys).<sup>207</sup>

The final law referenced in the abuse section of the Report is Article 11 of the Child Welfare Law.<sup>208</sup> Similar to the other provisions cited in this section of the 1993 Indonesian Report, Article 11 provides no specifics on how child abuse is defined, what services are available for abused children,

<sup>200</sup> See *infra* notes 220-21 and accompanying text.

<sup>201</sup> See *infra* note 219 and accompanying text.

<sup>202</sup> Article 2.3 states that the "[c]hild is entitled to protection before and after birth." Article 2.4 declares that the "[c]hild is entitled to protection from a potentially dangerous environment which may obstruct his/her growth and development." And Article 3 provides that "[i]n special circumstances a child should have priority for help, assistance, and protection." 1993 Indonesian Report, *supra* note 199, ¶ 30.

<sup>203</sup> *Id.* ¶ 75 (language as in the original text).

<sup>204</sup> *Id.*

<sup>205</sup> The section of the Penal Code listed in the 1993 Indonesian Report is Article 301. *Id.* A translation of Article 301 of the Penal Code is on file with the author.

<sup>206</sup> A translation of Article 301 of the Penal Code is on file with the author.

<sup>207</sup> 1993 Indonesian Report, *supra* note 199, ¶ 39.

<sup>208</sup> *Id.* ¶ 75.



or what punishment is administered to those who abuse children. Indeed, Article 11 is quite generalized and contains broad language such as “[c]hild welfare efforts include education, development, prevention, and rehabilitation” and “[c]hild welfare efforts are undertaken by the government or by society.”<sup>209</sup> Although the final section of Article 11 does state that implementation of these child welfare efforts will be provided for in further government regulations,<sup>210</sup> none of these regulations are included in the 1993 Indonesian Report nor the subsequent report filed in 1994.

The 1993 Indonesian Report also mentions Article 45 of the Indonesian Penal Code. According to the Report, this law outlines the punishment for using torture or other cruel acts against children, with special note being made that the proscribed behaviors include beating.<sup>211</sup> Yet, in the same paragraph of the Report where this law is discussed, it is also acknowledged that although some injuries to children still occur within the family and society, sometimes these transgressions are left unpunished since society regards them as guiltless.<sup>212</sup> It seems possible to infer from this assertion that a parent’s use of force against a child is not questioned, thus establishing the distinction between “child discipline” and “child abuse” remains largely outside the control of government or societal interference.

Granted, all of these laws do pertain to the “abuse” of children. Yet Article 19 clearly obligates the state to protect children from abuse by parents or other caretakers,<sup>213</sup> which is an issue these laws do not address. Indeed, a journal article written in 1981 pointed out that, at that time, no specific laws existed which served to protect children from cruelty, abuse and neglect.<sup>214</sup> Judging from the laws referenced in the 1993 Indonesian Report considered here, it appears that little progress in this area has been made statutorily. As for sexual abuse, one section of the 1993 Indonesian Report has the heading “Sexual exploitation and sexual abuse,” but the

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<sup>209</sup> This language comes from sections one and two of Article 11. A translation of Article 11 of the Child Welfare Law is on file with the author.

<sup>210</sup> Section five of Article 11 contains this language. A translation of Article 11 of the Child Welfare Law is on file with the author.

<sup>211</sup> *1993 Indonesian Report*, *supra* note 199, ¶ 61. A translation of the Article, however, indicates that the law pertains to when, in a criminal prosecution for certain offenses, a child under 16 years of age may be returned to his parents, guardian, or caretaker without sentence, or turned over to the government without sentence. A translation of Article 45 of the Penal Code is on file with the author.

<sup>212</sup> *1993 Indonesian Report*, *supra* note 199, ¶ 61.

<sup>213</sup> *See supra* note 7 and accompanying text.

<sup>214</sup> Siti Rahayu Haditono, *Prevention and Treatment of Child Abuse and Neglect Among Children Under Five Years of Age in Indonesia*, 5 CHILD ABUSE & NEGLECT, 97, 97 (1981).

corresponding text only discusses child prostitution which is essentially dismissed with the statement “[d]ue to the religious influence and strong control of the community, child prostitution and sexual exploitation are not prevalent in Indonesia.”<sup>215</sup>

Clearly, a high regard for family privacy curbs the ability of the Government to regulate the parent-child relationship with respect to conduct that may lead to or already is abusive; this strict control of parents over their children is endorsed by a cultural belief that children have “no right to express their views to their parents.”<sup>216</sup> Indonesian tradition further holds that the family is the “safest institution” for the protection of children.<sup>217</sup> Thus, consistent with this strong emphasis on family privacy and parental authority, there is not only low awareness in Indonesian society about the problems of child abuse and neglect, but also a low reporting rate for such incidents.<sup>218</sup>

#### b. *The Convention*

Since much of the 1993 Indonesian Report to the Committee focuses on the Government’s efforts to enhance child survival and development, considerable attention is given to issues such as increasing educational opportunities for children<sup>219</sup> as well as reducing the mortality rate<sup>220</sup> and

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<sup>215</sup> 1993 Indonesian Report, *supra* note 199, ¶ 113. The second report filed by Indonesia to the Committee further states that no specific laws have been passed to cover sexual abuse, but several ministerial decrees have been issued which deal with the issue (although it is unclear whether they actually address sexual abuse or child prostitution). *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention (Indonesia)*, U.N. Committee on the Rights of the Child, ¶ 51, U.N. Doc. CRC/C/3/Add.26 (1994) [hereinafter 1994 Indonesian Report].

<sup>216</sup> 1993 Indonesian Report, *supra* note 199, ¶ 49.

<sup>217</sup> The full text of this paragraph states:

According to Indonesian tradition, a family is the safest institution for the protection of its members, including children. The family provides physical, mental and spiritual protection, and gives guidance to the child to be able to live as a good and gentle person in society. In particular cases, the Government and the national law offer protection to the child.

*Id.* ¶ 101. But again, no elaboration on what type of protection the law offers is provided.

<sup>218</sup> *Id.* ¶¶ 62 and 75.

<sup>219</sup> 1993 Indonesian Report, *supra* note 199, ¶ 79 (discussing the establishment of primary schools throughout the country as well as the increased participation rate for basic education). *See also id.* ¶¶ 84-97 (detailing the Indonesian education system).

<sup>220</sup> *Id.* ¶ 46 (acknowledging the high mortality rate and the important role Government must play in enhancing survival rates for children under five years of age). *See also id.* ¶ 79 (discussing health centers placed throughout the country as well as the decreasing mortality rate for under-five children). *See also id.* ¶ 81 (outlining programs to help with, *inter alia*, nutrition, safe water, health education, immunization, and encouragement of breast-feeding).

malnutrition<sup>221</sup> problems for children under five years of age. Despite the Government giving priority to these issues, however, the Committee's preliminary feedback to Indonesia expressed a concern that the portion of the budget allocated to social services, particularly primary health care and education, was too small.<sup>222</sup> The Committee also highlighted the incompatibility of Indonesia's juvenile justice system with the requirements of the Convention,<sup>223</sup> and it raised questions about the lack of information provided on child labor.<sup>224</sup> Accordingly, in the second report filed by Indonesia to the Committee, the majority of the report is devoted to describing the juvenile justice system,<sup>225</sup> outlining regulations on child labor,<sup>226</sup> and providing more detail on education<sup>227</sup> and health programs.<sup>228</sup>

Interestingly, while China and Indonesia seem to be grappling with similar socioeconomic problems,<sup>229</sup> the Committee makes no mention of the Article 19 requirements nor raises any concerns about how child abuse is being dealt with in Indonesia as it did for China.<sup>230</sup> It is not surprising, then, that in Indonesia's second report filed with the Committee, information on how child abuse is being dealt with is again absent. Yet the Committee's response to this supplemental data did urge Indonesia to "take all necessary measures to prevent disappearances, torture, ill-treatment, and illegal or arbitrary detention of minors."<sup>231</sup> The Committee additionally recommended that these cases be investigated so that suspected offenders can be brought before the courts, and appropriate punishment be given to those found guilty while providing compensation to the victims.<sup>232</sup> This concern by the Committee does not seem to refer to abuse suffered at the hands of a child's parent or caretaker, however, but rather that imposed by government authorities such as police and military personnel.<sup>233</sup> Thus, the

<sup>221</sup> *Id.* ¶ 83.

<sup>222</sup> *Report Adopted by the Committee at its 104th Meeting, on 8 October 1993*, U.N. Committee on the Rights of the Child, ¶ 49, U.N. Doc. CRC/C/20 (1993) [hereinafter *1993 Committee Report*].

<sup>223</sup> *Id.* ¶ 51.

<sup>224</sup> *Id.* ¶ 53.

<sup>225</sup> *1994 Indonesian Report*, *supra* note 215, ¶¶ 14-39.

<sup>226</sup> *Id.* ¶¶ 40-50.

<sup>227</sup> *Id.* ¶¶ 54-58, ¶ 61, ¶¶ 64-66.

<sup>228</sup> *Id.* ¶ 53, ¶¶ 59-60.

<sup>229</sup> *See supra* notes 140-43 and accompanying text.

<sup>230</sup> *See supra* notes 134-35 and accompanying text.

<sup>231</sup> *Report on the Seventh Session*, U.N. Committee on the Rights of the Child, ¶ 87, U.N. Doc. CRC/C/34 (1994) [hereinafter *1994 Committee Report*].

<sup>232</sup> *Id.*

<sup>233</sup> This conclusion is further supported by the fact that the Committee had raised concerns in its 1993 Committee Report to Indonesia about an incident in November 1991 in Santa Cruz, Dili where

Committee's concerns regarding Indonesia's compliance with the Convention still do not encompass Article 19.

Without doubt, Indonesia is in the first stage of responding to the child abuse problem, which is denial.<sup>234</sup> Interestingly, the Government states that it has implemented a campaign to educate the community, especially families, that children are "family assets and also future human resources for development,"<sup>235</sup> and, as such, children should be given optimal care to guarantee their survival and development.<sup>236</sup> Yet this education campaign seems incongruous with the Government's assertion that the family provides a protective environment<sup>237</sup> since protection implies concern about preserving or caring for something of value. Nonetheless, there is evidence to suggest that as the importance of children to a society increases, child maltreatment correspondingly decreases;<sup>238</sup> thus, although this effort by the Government does not explicitly address child abuse, it may begin the process of elevating child abuse to a level of societal consciousness.

In addition, the increasing industrialization of Indonesia may correspond with a greater respect for children's worth just as it did for many countries in the nineteenth century.<sup>239</sup> As with those countries, this enhanced appreciation may lead to more legislation being enacted on behalf of Indonesian children.<sup>240</sup> Indeed, the Government points out that younger families now have a more democratic exchange of ideas between parents and children.<sup>241</sup> Thus, as children become respected as individuals distinct from their parents, the line between family privacy and allowable Government interference may soften. Until the Government takes a more active role, however, it does not seem possible that awareness of the problem of child abuse will be raised in Indonesia.

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excessive force was used by security personnel against demonstrating children. 1993 Committee Report, *supra* note 222, ¶ 52. The 1994 Committee Report mentions that the Committee is still concerned about the high number of complaints about ill-treatment of children by police, security or military personnel. 1994 Committee Report, *supra* note 231, ¶ 78.

<sup>234</sup> The five stages are detailed at *supra* note 62 and accompanying text.

<sup>235</sup> 1993 Indonesian Report, *supra* note 199, ¶ 47.

<sup>236</sup> *Id.*

<sup>237</sup> See *supra* note 217 and accompanying text.

<sup>238</sup> In cultures where children are highly valued for their "economic utility, for perpetuating family lines and the cultural heritage, and as sources of emotional pleasure and satisfaction," cross-cultural literature suggests that child abuse is less likely to occur. Korbin, *supra* note 43, at 70-71.

<sup>239</sup> See *supra* notes 19-20 and accompanying text.

<sup>240</sup> See *supra* note 15 and accompanying text.

<sup>241</sup> 1993 Indonesia Report, *supra* note 199, ¶ 49.

*B. Concluding Observations on the Case Studies*

The study of the four countries considered here indicates that factors such as the strength of a country's government, cultural attitudes toward child rearing, and economic prosperity significantly influence how a culture addresses the problem of child abuse. While economics play an important role in all four countries, government strength is more of a consideration in the Southeast Asian countries while cultural biases are more influential in the Northeast Asian countries. Of course, this assertion is not meant to imply that all of the factors are not working on some level in all four countries, but certain conditions are more prevalent in some countries than others.

Importantly, strength of a government in this sense does not refer to how democratic or authoritarian a country's government institutions are, but rather to what extent the government is able to intervene in the domestic realm to regulate the child-parent relationship. The level of intervention seems directly related to how much a country is dealing with the problem of child abuse. For example, in Indonesia, where the attitude of noninterference with the parent-child relationship by the state is the most pronounced, parents' control over children is practically unfettered and any abuse by parents is excused by the Government as guiltless.<sup>242</sup> In Singapore, on the other hand, where the Government not only has extensive programs for dealing with child abuse but its statutes clearly define such abuse,<sup>243</sup> awareness of the problem is high and parents are subject to strict penalties for child maltreatment.<sup>244</sup> Of course, the extent of the Singapore Government's strength is further reflected by the fact that a majority of Singaporeans now consider the state punishment of caning as a more acceptable form of discipline in the home than slapping;<sup>245</sup> thus Government involvement in domestic relations does not necessarily ensure an abolition of physical punishment.

In Hong Kong and China, the societal attitude toward what is considered appropriate discipline presents the largest obstacle to effectively combating domestic child abuse since Chinese have traditionally endorsed

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<sup>242</sup> See *supra* note 212 and accompanying text.

<sup>243</sup> See *supra* notes 156-59 and accompanying text.

<sup>244</sup> See *supra* note 156.

<sup>245</sup> See *supra* note 184 and accompanying text.

the use of physical punishment once a child reaches the age of four or five.<sup>246</sup> Thus, even though the Hong Kong Government has done much to address the problem of child abuse through programs and statutory mandates,<sup>247</sup> such laws can have little effect on changing the cultural precept if citizens do not consider certain forms of violence against a child as crossing over the statutory limit of allowable behavior.<sup>248</sup> Likewise, in China there is little to indicate that cultural or legal norms are progressing toward the Convention's ideal that children's rights are not derivative of their parents'.<sup>249</sup>

Economic affluence is the one factor that similarly affects the policies and priorities of all four of these countries. In the two wealthier states of Hong Kong and Singapore, relatively greater resources are placed into programs and education about child abuse,<sup>250</sup> whereas both Indonesia and China find their funds being consumed by programs which are needed to help children survive and develop.<sup>251</sup> In this respect, a country's ability to concentrate both money and energy into dealing with child abuse becomes almost a luxury which is only possible in conjunction with economic prosperity. That the Committee does not concentrate on Article 19 for China and Indonesia then is not surprising, since, at this stage of development, other more elementary concerns for children are more pressing.

#### IV. CONCLUSION

While the Convention seeks to establish children's rights as distinct from their parents',<sup>252</sup> the fact that children are the only members of society who can be hit with impunity clearly indicates the position they continue to hold in society.<sup>253</sup> Granted, children need the guidance and protection their

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<sup>246</sup> See *supra* note 72 and accompanying text.

<sup>247</sup> See *supra* note 74 and accompanying text.

<sup>248</sup> See *supra* notes 79-80 and accompanying text. In the Committee's concluding observations to Hong Kong, they stressed that prevention of child abuse would require attitudinal changes in society, including non-acceptance of corporal punishment as well as an enhanced regard for "the inherent dignity of the child." *Report on the Thirteenth Session*, U.N. Committee on the Rights of the Child, ¶ 151, U.N. Doc. CRC/C/57 (1996).

<sup>249</sup> See *supra* notes 117-118 and accompanying text.

<sup>250</sup> See *supra* notes 74, 97, 160-62, 175-76 and accompanying text.

<sup>251</sup> See *supra* notes 140-43 and 219-21 and accompanying text.

<sup>252</sup> See *supra* notes 32-33 and accompanying text.

<sup>253</sup> Michael Freeman, *The Convention: An English Perspective*, in CHILDREN'S RIGHTS: A COMPARATIVE PERSPECTIVE 93, 100 (Michael Freeman ed., 1996).

parents provide; however, the status and protection of children would be advanced significantly if the practice of physical punishment were to be outlawed.<sup>254</sup> Yet changing the laws is only the beginning of the process, for if the values of a culture do not evolve, especially the beliefs of those who are to administer and uphold the laws, little will in fact change.

Clearly, cultural influences cannot be excluded from either a discussion of child abuse or human rights in general, but they likewise cannot be allowed to supersede those rights.<sup>255</sup> When a clear conflict between cultural biases and human rights norms develops, cultural beliefs must yield.<sup>256</sup> Yet determining when such a conflict has occurred is necessarily affected by cultural biases: one culture's definition of acceptable child discipline may not be reconcilable with another belief that such punishment violates a child's rights. Given that Asian leaders promote a view that Asian values are better than those of the West because Asian values emphasize a citizen's duty toward society, unlike Western values which stress individual freedom,<sup>257</sup> the Convention's recognition of children's rights as *sui generis*<sup>258</sup> may be incompatible with the cultural traditions of physical punishment and family secrecy in the countries studied here.

On the other hand, the doctrine of *pacta sunt servanda* in international law requires that promises must be kept. By ratifying the Convention, these countries have made a promise to their children to uphold and enforce the rights it grants; if cultural biases are allowed to exempt a state from certain obligations, the most widely ratified Convention in the world may be left devoid of its essential quality.

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<sup>254</sup> *Id.* Sweden and some European countries have gone so far as to outlaw the hitting of children by parents. *Id.*

<sup>255</sup> Philip Alston, *The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights*, in THE BEST INTERESTS OF THE CHILD: RECONCILING CULTURE AND HUMAN RIGHTS 1, 20 (Philip Alston ed., 1994).

<sup>256</sup> *Id.* at 21

<sup>257</sup> Ben Barber, *Asian Leaders Tout Superior Social Norms; Economic Success Spurs Slams at West*, WASH. TIMES, June 21, 1996 (World), at A17, available in LEXIS, World library, ALLWLD file.

<sup>258</sup> See *supra* note 6 and accompanying text.