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**We Built This City: Public  
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# We Built This City: Public Participation in Land Use Decisions in Singapore

Jack Tsen-Ta *Lee*\*

This article considers the extent to which the legal framework for making land use decisions in Singapore allows for public participation. It examines the issue from two angles: the creation and preservation of the built environment, and the transient use of public space. The first angle is discussed primarily from a heritage law viewpoint, focusing on planning law, compulsory acquisition law, and the legal regime for creating national monuments. As for the second angle, the article looks at how the use of common spaces for assemblies and processions is regulated. The foregoing are examined in the context of Edward Soja's assertion in *Seeking Spatial Justice* (2010) that the equitable distribution of resources, services and access in cities is an important right.

GIVEN SINGAPORE'S diminutive geographical extent, the use of its land and the development of its built environment are extensively regulated through law. The Government has also put in place legal regimes limiting the transient use of public space for assemblies and processions, which appear to stem from a deep-seated concern about the possibility of outbreaks of public disorder. Nonetheless, as the city – which encompasses the whole of Singapore – is primarily for the people rather than the Government, it stands to reason that denizens of the city should have a say in the decisions made on their behalf by public authorities.

This article considers the extent to which the legal framework for making land use decisions in Singapore allows for public participation, in the context of the assertion by US political geographer and urban planner Edward Soja that spatial justice – the equitable distribution of resources, services and access in cities – is an important right. Part I identifies key themes from Soja's recent book on spatial justice. Part II then examines the issue from two angles: the creation and preservation of the built environment, and the transient use of public space. I will discuss the first angle primarily from a heritage law viewpoint, focusing on planning law, compulsory acquisition law, and the legal regime for creating national monuments. As for the second angle, the article looks at how the use of common spaces for assemblies and

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processions is regulated. Where statutory schemes appear inadequate, judicial review in administrative and constitutional law is also considered.

## I. EDWARD SOJA'S THESIS IN *SEEKING SPATIAL JUSTICE*

No *précis* of Edward Soja's 2010 book *Seeking Spatial Justice*<sup>1</sup> will properly do it justice, but for the purpose of this article I will attempt to pick out some key themes. Building on the work of philosophers and social theorists like Henri Lefebvre (1901–1991) and David Harvey (born 1935), Soja highlights the importance of the city to societies today, noting that it is “a special space and place of social and economic advantage, a focal point for the workings of social power and hierarchy, and therefore a potent battleground for struggles seeking greater democracy, equality, and justice”.<sup>2</sup> This has particular resonance for Singapore, an archetypal city-state which, since the 1950s, has been regarded as completely urbanized.<sup>3</sup>

What, then, is spatial justice? In the introduction to his book, Soja declares that he will not “provide a simplified ‘cookbook’ definition... but allow its meaning to evolve and expand chapter by chapter”.<sup>4</sup> It is closely linked to Lefebvre's idea of a ‘right to the city’, which Harvey characterized as “not merely a right of access to what the property speculators and state planners define, but an active right to make the city different, to shape it more in accord with our heart's desire, and to re-make ourselves thereby in a different image”.<sup>5</sup> Lefebvre was of the view that urban life produces unequal power relations, which eventually lead to unjust distributions of social resources in the city. The right to the city corrects this imbalance by providing disadvantaged city dwellers with the basis upon which to call for “greater access to social power and valued resources”, the aim being to “gain greater control over the forces shaping urban space, in other words to reclaim democracy from those who have been using it to maintain their advantaged positions”.<sup>6</sup> In Lefebvre's words:<sup>7</sup>

The right to the city... should modify, concretize and make more practical the rights of the citizen as an urban dweller (*citadin*) and user of multiple services. It would affirm, on the one hand, the right of users to make known their ideas on the space and time of their activities in the urban area; it would also cover the right to use of the center, a privileged place, instead of being dispersed and stuck into ghettos (for workers, immigrants, the “marginal” and even for the “privileged”).

In the French and Anglo-American traditions, justice and liberal democracy have been ‘legalized’ in the sense that they have become associated with human rights which are protected by the law,<sup>8</sup> at least to some extent. Soja recognizes the

<sup>1</sup> Edward W[illiam] Soja, *Seeking Spatial Justice* (Minneapolis, Minn.: University of Minnesota Press, 2010).

<sup>2</sup> Soja, “Building a Spatial Theory of Justice” in *Seeking Spatial Justice*, *ibid.*, 67–110 at 96.

<sup>3</sup> *World Urbanization Prospects: The 2011 Revision* (UN Doc. ST/ESA/SER.A/322) (New York, N.Y.: Population Division, Department of Economic and Social Affairs, United Nations, 2012) at 128, Table A.2 (providing the percentage of population at mid-year residing in urban areas), online: [UN DESA <http://esa.un.org/unpd/wup/pdf/FINAL-FINAL\\_REPORT%20WUP2011\\_Anextables\\_01Aug2012\\_Final.pdf>](http://esa.un.org/unpd/wup/pdf/FINAL-FINAL_REPORT%20WUP2011_Anextables_01Aug2012_Final.pdf) (last accessed: 4 January 2013; [archived](#) at <http://www.webcitation.org/6D0phYZaN>).

<sup>4</sup> Soja, “Introduction” in *Seeking Spatial Justice*, *supra* note 1, 1–11 at 6.

<sup>5</sup> David Harvey, “A Right to the City” (2003) 27(4) *Int'l J. Urban & Regional Research* 939–941 at 941, cited in Soja, “Building a Spatial Theory of Justice”, *ibid.* at 94.

<sup>6</sup> Soja, *ibid.* at 96.

<sup>7</sup> Henri Lefebvre (Eleonore Kofman & Elizabeth Lebas, eds. & transl.), *Writings on Cities* (Oxford; Cambridge, Mass.: Blackwell, 1996) at 34, cited in Soja, *ibid.* at 99.

<sup>8</sup> Soja, *ibid.* at 75–76.

importance of this development. As an example of spatial justice in action, he cites *Labor/Community Strategy Center v. Los Angeles County Metropolitan Transit Authority* (the Bus Riders Union case),<sup>9</sup> a class action suit by bus riders against Los Angeles' Metropolitan Transit Authority (MTA) for violation of Title VI of the *Civil Rights Act of 1964*,<sup>10</sup> which prohibits government agencies that receive federal funds from acting in a discriminatory manner. The plaintiffs alleged that the MTA had neglected the transport needs of racial minorities and the poor while favouring more wealthy residents. The matter was settled prior to trial before the District Court of the Central District of California. The Court recorded a consent decree which required the MTA, over a ten-year period, to give the highest budget priority to improving the quality of the bus service and to guarantee equitable access to public mass transport.<sup>11</sup>

Singapore, a former British colony, inherited a Westminster-style government which embodies representative democracy<sup>12</sup> and the English common law system. Like the United States, it has a written constitution which guarantees a number of fundamental liberties to the people. These include the rights to equality before the law and equal protection of the law.<sup>13</sup> We will therefore consider if the US experience has any relevance for Singapore. At this juncture it should be pointed out that, unsurprisingly, the *Constitution* contains no mention of spatial justice. Thus, if it is asserted that spatial justice is a human right in Singapore and should be given effect as such, a court must find that it is an aspect of one of the fundamental liberties explicitly set out in the *Constitution*, such as the right to equality already mentioned, or perhaps the rights to life and personal liberty.<sup>14</sup>

Nonetheless, I do not read Soja as asserting that spatial justice can only be vindicated through the law. Rather, he highlights the necessity of effecting change

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<sup>9</sup> *Labor/Community Strategy Center v. Los Angeles County Metropolitan Transit Authority*, DC No. CV-94-05936-TJH (29 October 1996), Dist. Ct, Central Dist. (Cal., US).

<sup>10</sup> *Civil Rights Act of 1964*, Pub. L. 88-352, 78 Stat. 241 (enacted 2 July 1964).

<sup>11</sup> Soja, "Prologue" in *Seeking Spatial Justice*, *supra* note 1, vii–xviii at vii–viii and x. Subsequently, the plaintiffs claimed that the MTA had not fulfilled its obligations under the consent decree. Since no agreement could be reached on the matter, a special master was appointed under the terms of the decree to give directions. The MTA appealed unsuccessfully against the master's directions (*Labor/Community Strategy Center v. Los Angeles County Metropolitan Transit Authority*, 263 F. 3d 1041 (2001) (C.A.) (9th Cir. Cal., U.S.)), and the US Supreme Court declined to hear an appeal (*Los Angeles County Metropolitan Transit Authority v. Labor/Community Strategy Center* 535 US 951 (2002)). Prior to the consent decree's expiry the plaintiffs applied to the District Court for an extension, again claiming that the MTA had not properly complied with it. The District Court refused an extension, and the refusal was upheld by the Court of Appeal of the Ninth Circuit on the ground that there had been substantial compliance with the decree by the MTA: *Labor/Community Strategy Center v. Los Angeles County Metropolitan Transit Authority* 564 F. 3d 1115 (2009) (C.A.) (9th Cir. Cal., US).

<sup>12</sup> The term *representative democracy* does not appear in the *Constitution of the Republic of Singapore* (1985 Rev. Ed., 1999 Rep.) [*Constitution*], but in the Proclamation of Singapore contained in the *Independence of Singapore Agreement 1965* (1985 Rev. Ed.) which was entered into by the Governments of Malaysia and Singapore to effect Singapore's separation from Malaysia, Prime Minister Lee Kuan Yew proclaimed on behalf of the people and the Government that as from 9 August 1965 "Singapore shall be forever a sovereign democratic and independent nation...". The Government has on various occasions spoken of Singapore as a representative democracy: see, for example, Lee Hsien Loong (Prime Minister), "Parliamentary Elections (Motion)", *Singapore Parliamentary Debates, Official Report* (27 August 2008), vol. 84, cols. 3328–3409.

<sup>13</sup> *Constitution, ibid.*, Art. 12(1).

<sup>14</sup> *Constitution, ibid.*, Art. 9(1).

through political processes as well, stressing the prime importance of grassroots and local community action in this regard.<sup>15</sup>

## II. PUBLIC PARTICIPATION IN LAND USE DECISIONS IN SINGAPORE

I turn now to examine the legal framework in Singapore relating to land use decisions. These may be divided into laws relating to the structuring of the built environment, and laws governing the transient use of public space. Obviously, there are many laws that relate to the foregoing, so those described here should be seen as illustrative. Our concern is the extent to which regulations of this sort ensure spatial justice – how much of a voice they allow the city’s denizens.

### A. LAWS RELATING TO THE BUILT ENVIRONMENT

#### 1. Planning

As Singapore has a land area of just 718.3 square kilometres,<sup>16</sup> planned development of its built environment is essential. This was recognized from the founding of the modern settlement, with Sir Stamford Raffles conceptualizing the first town plan for the Singapore River’s environs and issuing instructions concerning it to a newly appointed Town Committee on 4 November 1822.<sup>17</sup> Today, the accepted method of ensuring orderly development is to produce and regularly update a master plan, which is drawn up based on analyses of the nation’s physical, social, and economic conditions.<sup>18</sup> The first Master Plan was prepared by the Singapore Improvement Trust<sup>19</sup> between 1952 and 1955 and approved by the Governor in Council on 5 August 1958; it formed the basis for successive Master Plans.<sup>20</sup> On 1 February 1960, the *Planning Act 1959*<sup>21</sup> came into force, providing, among other things, for the Master Plan to be reviewed every five years<sup>22</sup> by the “competent authority” charged with responsibility for implementing the *Act*, who is the Chief Planner of the Urban Redevelopment Authority (URA).<sup>23</sup>

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<sup>15</sup> See generally Soja, “Seeking Spatial Justice in Los Angeles” in *Seeking Spatial Justice*, *supra* note 1, 111–155.

<sup>16</sup> As of 2014: Department of Statistics, Singapore, *Singapore in Figures 2015* (2015), online: [Department of Statistics](https://www.singstat.gov.sg/docs/default-source/default-document-library/publications/publications_and_papers/reference/sif2015.pdf) <[https://www.singstat.gov.sg/docs/default-source/default-document-library/publications/publications\\_and\\_papers/reference/sif2015.pdf](https://www.singstat.gov.sg/docs/default-source/default-document-library/publications/publications_and_papers/reference/sif2015.pdf)> (accessed 14 October 2015; [archived](https://perma.cc/R7KQ-4KSL) at <<https://perma.cc/R7KQ-4KSL>>).

<sup>17</sup> Martin Perry, Lily Kong, and Brenda Yeoh, *Singapore: A Developmental City State* (Singapore: John Wiley and Sons, 1997) at 26, cited in Cai Yunci, “Law and its Impact on Singapore’s Built Heritage” in Kevin Y[ew] L[ee] Tan and Michael Hor, eds., *Encounters with Singapore Legal History: Essays in Memory of Geoffrey Wilson Bartholomew* (Singapore: Singapore Journal of Legal Studies, Faculty of Law, National University of Singapore, 2009), 87–125 at 88.

<sup>18</sup> Tan Sook Yee, Tang Hang Wu, and Kelvin F[att] K[in] Low, “Planning and Development” in *Tan Sook Yee’s Principles of Singapore Land Law*, 3rd ed. (Singapore: LexisNexis, 2009), 751–772 at 751, para. 23.3.

<sup>19</sup> Under the provisions of Pt. IV of the *Singapore Improvement Ordinance* (Cap. 259, 1955 Ed.): see the *Planning Act* (Cap. 232, 1998 Rev. Ed.) [*PA*], s. 6.

<sup>20</sup> *PA*, *ibid.*, s. 6.

<sup>21</sup> *Planning Act 1959* (No. 12 of 1959), now the *PA*, *supra* note 19.

<sup>22</sup> Tan, Tang, and Low, *supra* note 18 at 752, para. 23.5. The relevant provision in the current *Act* is s. 8.

<sup>23</sup> *Appointment of Competent Authority* (Cap. 232, N 7, 2007 Rev. Ed.), para. 1(b). This notification also appoints as competent authorities the Chief Executive Officer of the Urban Redevelopment Authority (URA) to implement aspects of the *Act* other than revision of the Master Plan, and the

The Master Plan consists of information on how land may be used, approved maps, and a written statement that aids the interpretation of the Master Plan by summarizing the Master Plan's main proposals and providing descriptive matter to illustrate the proposals.<sup>24</sup> The Master Plan 2014 is the current version,<sup>25</sup> and its written statement deals with matters such as zoning, plot ratios, and factors to be taken into account when approving development applications.<sup>26</sup> Conservation is integral to the planning process, and the Minister for National Development is empowered to designate in the Master Plan “any area... of special architectural, historic, traditional or aesthetic interest” as a conservation area, which may comprise a whole area, a group of buildings, or even a single building.<sup>27</sup> The URA issues guidelines for the conservation of buildings or land within a conservation area and for the protection of their setting.<sup>28</sup>

Each Master Plan guides medium-term development over ten to 15 years,<sup>29</sup> and is regarded as an end product which is adhered to strictly in controlling development.<sup>30</sup> For longer term planning over a 40–50 year horizon and to guide the updating of Master Plans, the URA prepares Concept Plans aimed to “[ensure] there is sufficient land to meet long-term population and economic growth while providing a good quality living environment”. Reviewed every ten years, Concept Plans are not mandated by the *Planning Act* and are thus purely advisory.<sup>31</sup> The URA commenced a review for the Concept Plan 2011 in January 2010.<sup>32</sup> The process involved extensive public consultation, including a lifestyle survey<sup>33</sup> and focus groups on “quality of life”<sup>34</sup> and “sustainability and identity”.<sup>35</sup>

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Housing and Development Board (HDB) in respect of breaches of planning permission concerning its land: paras. 1(a) and (c).

<sup>24</sup> *PA*, *supra* note 19, s. 2 (definition of *written statement*) and s. 6.

<sup>25</sup> Available on the URA's website at “URA Maps”, online: <<https://www.ura.gov.sg/maps/>> (last accessed: 5 November 2014).

<sup>26</sup> *The Planning Act: Master Plan Written Statement 2014*, online: URA <<https://www.ura.gov.sg/uol/~media/User%20Defined/URA%20Online/master-plan/master-plan-2014/Written-Statement-2014.ashx>> (last accessed: 14 October 2015; [archived](https://web.archive.org/web/20150907205501/https://www.ura.gov.sg/uol/~media/User%20Defined/URA%20Online/master-plan/master-plan-2014/Written-Statement-2014.ashx) at <<https://web.archive.org/web/20150907205501/https://www.ura.gov.sg/uol/~media/User%20Defined/URA%20Online/master-plan/master-plan-2014/Written-Statement-2014.ashx>>).

<sup>27</sup> *PA*, *supra* note 19, s. 9.

<sup>28</sup> *Ibid.*, s. 11(1).

<sup>29</sup> *About Land Use Planning* (Singapore: URA, 2010), online: URA <[http://www.ura.gov.sg/land\\_use\\_planning/](http://www.ura.gov.sg/land_use_planning/)> (last accessed: 5 January 2013; [archived](http://www.webcitation.org/6DRmw36Gs) at <<http://www.webcitation.org/6DRmw36Gs>>).

<sup>30</sup> Leung Yew Kwong, *Development Land and Development Change in Singapore* (Singapore: Butterworths, 1987) at 15–17 and 22–23, cited in Tan, Tang, and Low, *supra* note 18 at 753, para. 23.6.

<sup>31</sup> Tan, Tang, and Low, *supra* note 18 at 753, para. 23.8.

<sup>32</sup> URA, “Concept Plan Review 2011: Planning for a Sustainable Singapore”, online: URA <<http://spring.ura.gov.sg/conceptplan2011/index.cfm>> (last accessed: 6 January 2013; [archived](http://web.archive.org/web/20100202222744/http://spring.ura.gov.sg/conceptplan2011/index.cfm) at <<http://web.archive.org/web/20100202222744/http://spring.ura.gov.sg/conceptplan2011/index.cfm>>).

<sup>33</sup> URA, *URA Lifestyle Survey 2009* (Singapore: URA, 2010), online: URA <<http://spring.ura.gov.sg/conceptplan2011/results/Report%20-%20Lifestyle%20Survey%20and%20Online%20Survey.pdf>> (last accessed: 6 January 2013; [archived](http://www.webcitation.org/6DRqZOMb1) at <<http://www.webcitation.org/6DRqZOMb1>>).

<sup>34</sup> URA, *Final Report of Focus Group on Quality of Life* (Singapore: URA, 2010), online: URA <[http://spring.ura.gov.sg/conceptplan2011/results/FGC\\_CPR-Quality\\_of\\_Life\\_FA.pdf](http://spring.ura.gov.sg/conceptplan2011/results/FGC_CPR-Quality_of_Life_FA.pdf)> (last accessed: 6 January 2013; [archived](http://www.webcitation.org/6DRrvqjvF) at <<http://www.webcitation.org/6DRrvqjvF>>).

<sup>35</sup> URA, *Final Report of Focus Group on Sustainability and Identity* (Singapore: URA, 2010), online: URA <[http://spring.ura.gov.sg/conceptplan2011/results/FGC\\_CPR-Sustainability\\_and\\_Identity\\_FA.pdf](http://spring.ura.gov.sg/conceptplan2011/results/FGC_CPR-Sustainability_and_Identity_FA.pdf)> (last accessed: 6 January 2013; [archived](http://www.webcitation.org/6DRraLzbJ) at <<http://www.webcitation.org/6DRraLzbJ>>).

Amendments to a Master Plan must be proposed by the URA and approved by the Minister.<sup>36</sup> A proposal for a material<sup>37</sup> amendment must be advertised in the *Government Gazette* and in one English, Chinese, Malay and Tamil newspaper circulating in Singapore specifying a period of not less than two weeks within which the public may make objections and representations concerning it.<sup>38</sup> The Minister is required to give any objectors or representors an opportunity to appear before a hearing or public inquiry, and to take into account such objections and representations and the findings of the hearing or public inquiry when deciding whether to approve or reject the proposal.<sup>39</sup> Therefore, at least in theory the processes and legal procedures for keeping Concept Plans and Master Plans up to date arguably promote spatial justice.

However an unexpected incident has cast doubt on the effectiveness of the Master Plan amendment procedure. In September 2011, the Government announced that it would be building a road across two adjoining historic cemeteries, Bukit Brown Cemetery and Seh Ong Cemetery, in order to alleviate traffic congestion in the area.<sup>40</sup> Together, these two cemeteries form part of what is believed to be the largest Chinese cemetery outside China.<sup>41</sup> Although exhumation works began in October 2013,<sup>42</sup> the road only appeared on the URA's Draft Master Plan 2013 launched on 20 November.<sup>43</sup> The Singapore Heritage Society (SHS) and members of the All Things Bukit Brown and SOS Bukit Brown civil society communities submitted objections to the proposal to amend the Master Plan to include the road.<sup>44</sup> In addition, the Nature Society

<sup>36</sup> PA, *supra* note 19, s. 8.

<sup>37</sup> Under the *Planning (Master Plan) Rules* (Cap. 232, R 1, 2000 Rev. Ed.) [PMPR], r. 6(3), non-material amendments may be made without complying with the procedure described in the text.

<sup>38</sup> PMPR, *ibid.*, r. 2 (definition of *notice by advertisement*) and r. 4.

<sup>39</sup> PMPR, *ibid.*, r. 6.

<sup>40</sup> Land Transport Authority, URA, and National Parks Board, "Construction of New Dual Four-lane Road to Relieve Congestion along PIE & Lornie Road and Serve Future Developments", Urban Redevelopment Authority (12 September 2011), online: [URA](http://www.ura.gov.sg/pr/text/2011/pr11-109.html) <<http://www.ura.gov.sg/pr/text/2011/pr11-109.html>> (last accessed: 13 January 2014; [archived](http://web.archive.org/web/20140108063907/http://www.ura.gov.sg/pr/text/2011/pr11-109.html) at <<http://web.archive.org/web/20140108063907/http://www.ura.gov.sg/pr/text/2011/pr11-109.html>>).

<sup>41</sup> Terence Chong, "Bukit Brown as Contested Space" in *Position Paper on Bukit Brown* (Singapore: Singapore Heritage Society, 2012) at 20–24, online: [Singapore Heritage Society](http://www.singaporeheritage.org/wp-content/uploads/2011/11/SHS_BB_Position_Paper.pdf) <[http://www.singaporeheritage.org/wp-content/uploads/2011/11/SHS\\_BB\\_Position\\_Paper.pdf](http://www.singaporeheritage.org/wp-content/uploads/2011/11/SHS_BB_Position_Paper.pdf)> (last accessed: 27 February 2013; [archived](http://web.archive.org/web/20121022225529/http://www.singaporeheritage.org/wp-content/uploads/2011/11/SHS_BB_Position_Paper.pdf) at <[http://web.archive.org/web/20121022225529/http://www.singaporeheritage.org/wp-content/uploads/2011/11/SHS\\_BB\\_Position\\_Paper.pdf](http://web.archive.org/web/20121022225529/http://www.singaporeheritage.org/wp-content/uploads/2011/11/SHS_BB_Position_Paper.pdf)>).

<sup>42</sup> Siau Ming En, "[Exhumation of Bukit Brown Graves to Start in Oct](http://www.todayonline.com/singapore/exhumation-bukit-brown-graves-start-oct)" *Today* (6 August 2013), online: <<http://www.todayonline.com/singapore/exhumation-bukit-brown-graves-start-oct>> (last accessed: 10 January 2014; [archived](http://web.archive.org/web/20130908074635/http://www.todayonline.com/singapore/exhumation-bukit-brown-graves-start-oct) at <<http://web.archive.org/web/20130908074635/http://www.todayonline.com/singapore/exhumation-bukit-brown-graves-start-oct>>).

<sup>43</sup> URA, *Our Future, Our Home. Draft Master Plan 2013 Exhibition at URA* (20 November 2013), online: [URA](http://www.ura.gov.sg/uol/media-room/news/2013/nov/pr13-75.aspx) <<http://www.ura.gov.sg/uol/media-room/news/2013/nov/pr13-75.aspx>> (last accessed: 8 November 2014; [archived](http://web.archive.org/web/20140716233702/http://www.ura.gov.sg/uol/media-room/news/2013/nov/pr13-75.aspx) at <<http://web.archive.org/web/20140716233702/http://www.ura.gov.sg/uol/media-room/news/2013/nov/pr13-75.aspx>>).

<sup>44</sup> Singapore Heritage Society, *Singapore Heritage Society's letter to MND on Draft Master Plan 2013* (18 December 2013), online: [Facebook](https://www.facebook.com/notes/singapore-heritage-society/singapore-heritage-societys-letter-to-mnd-on-draft-master-plan-2013-18-dec-2013/611710158876624) <<https://www.facebook.com/notes/singapore-heritage-society/singapore-heritage-societys-letter-to-mnd-on-draft-master-plan-2013-18-dec-2013/611710158876624>> (last accessed: 11 January 2014; [archived](http://perma.cc/RPL8-U3Z2) at <<http://perma.cc/RPL8-U3Z2>>); Ian Chong, "How You Can Give Feedback on Bukit Brown in the Draft Master Plan 2013", *All Things Bukit Brown* (3 December 2013), online: [All Things Bukit Brown](http://bukitbrown.com/main/?p=8420) <<http://bukitbrown.com/main/?p=8420>> (last accessed: 11 January 2014; [archived](http://web.archive.org/web/20140111151432/http://bukitbrown.com/main/?p=8420) at <<http://web.archive.org/web/20140111151432/http://bukitbrown.com/main/?p=8420>>); "Your Feedback to MND", *All Things Bukit Brown* (12 December 2013), online: [All Things Bukit Brown](http://bukitbrown.com/main/?p=8459) <<http://bukitbrown.com/main/?p=8459>> (last accessed: 11 January 2014; [archived](http://web.archive.org/web/) at <<http://web.archive.org/web/>>).



(Singapore) (NSS) sent in an extensive report commenting on many issues of environmental concern relating to the Draft Master Plan, including conservation of the marine environment, swamps, and primary and secondary forests; the encroachment of development on nature areas; and the importance of environmental impact assessments.<sup>45</sup> On Bukit Brown Cemetery, the Society referred to its earlier conservation proposal on the matter,<sup>46</sup> and stressed that the cemetery is an “important wildlife habitat” which provides a nesting ground, especially for birds. Surveys it had conducted revealed the presence of endangered species of birds and mammals.<sup>47</sup>

About six months later a number of the representors, including the SHS and members of SOS Bukit Brown,<sup>48</sup> received the same standard-form letter dated 5 June 2014 from the Ministry of National Development (MND) stating that “the conservation of Singapore’s heritage is factored in our land use plans... [b]ut there will be occasions when trade-offs will need to be made in our land use decisions”. The letter noted that the justifications for the road “have been presented and debated in Parliament. The final road alignment was determined with inputs from agencies, such as the National Parks Board on biodiversity and the Public Utilities Board on drainage in the area.”<sup>49</sup> The next day, 6 June, the Master Plan 2014 was gazetted without any hearing or public inquiry having been conducted in relation to these representations.<sup>50</sup>

The URA gave a similar response to the NSS’s view in its December 2013 report that the Master Plan’s commitment to protecting biodiversity was “embarrassingly negligible” because by 2030 only 4.4 percent of Singapore’s land area – a “shocking niggardly contribution” – would be put to such use. This figure excluded reservoirs

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2014011151816/http://bukitbrown.com/main/?p=8459>); SOS Bukit Brown, *Gazetting the Land Use Master Plan 2014 – Did MND and URA Just Ignore the Law?* (3 July 2014), online: [Facebook](https://www.facebook.com/notes/sos-bukit-brown/gazetting-the-land-use-master-plan-2014did-mnd-and-ura-just-ignore-the-law/664480653634266) <<https://www.facebook.com/notes/sos-bukit-brown/gazetting-the-land-use-master-plan-2014did-mnd-and-ura-just-ignore-the-law/664480653634266>> (last accessed: 6 August 2014; [archived](http://perma.cc/EQ96-7NX9?type=image) at <<http://perma.cc/EQ96-7NX9?type=image>>).

<sup>45</sup> Nature Society (Singapore) Conservation Committee, *Feedback on the Updated URA Master Plan (November 2013)* (19 December 2013), online: <<http://www.nss.org.sg/documents/Nature%20Society%20Feedback%20on%20the%20Updated%20URA%20Master%20Plan.pdf>> (last accessed: 10 August 2015; [archived](https://web.archive.org/web/20150327050735/http://nss.org.sg/documents/Nature%20Society%20Feedback%20on%20the%20Updated%20URA%20Master%20Plan.pdf) at <<https://web.archive.org/web/20150327050735/http://nss.org.sg/documents/Nature%20Society%20Feedback%20on%20the%20Updated%20URA%20Master%20Plan.pdf>> [NSS, *Feedback*].

<sup>46</sup> Nature Society (Singapore), *Nature Society (Singapore)’s Response to the Bukit Brown Expressway Plan* (23 March 2012), online: <[http://www.nss.org.sg/documents/BB\\_Response\\_HHC\\_AS\\_CL\\_v3-9.260312.pdf](http://www.nss.org.sg/documents/BB_Response_HHC_AS_CL_v3-9.260312.pdf)> (last accessed: 10 August 2015; [archived](https://web.archive.org/web/20140110103740/http://www.nss.org.sg/documents/BB_Response_HHC_AS_CL_v3-9.260312.pdf) at <[https://web.archive.org/web/20140110103740/http://www.nss.org.sg/documents/BB\\_Response\\_HHC\\_AS\\_CL\\_v3-9.260312.pdf](https://web.archive.org/web/20140110103740/http://www.nss.org.sg/documents/BB_Response_HHC_AS_CL_v3-9.260312.pdf)>), which was an addendum to its original paper *Nature Society (Singapore)’s Position on Bukit Brown* (12 December 2011), online: <<http://www.nss.org.sg/documents/Nature%20Society%27s%20Position%20on%20Bukit%20Brown.pdf>> (last accessed: 10 August 2015; [archived](https://web.archive.org/web/20150524175050/http://www.nss.org.sg/documents/Nature%20Society%27s%20Position%20on%20Bukit%20Brown.pdf) at <<https://web.archive.org/web/20150524175050/http://www.nss.org.sg/documents/Nature%20Society%27s%20Position%20on%20Bukit%20Brown.pdf>>).

<sup>47</sup> NSS, *Response to Plan*, *supra* note 46 at 13.

<sup>48</sup> SOS Bukit Brown, *Gazetting the Land Use Master Plan 2014*, *ibid.*; Andrew Loh, “Did URA & MND contravene law on Master Plan?”, *The Online Citizen* (3 July 2014), online: [The Online Citizen](http://www.theonlinecitizen.com/2014/07/did-ura-mnd-contravene-law-on-master-plan/) <<http://www.theonlinecitizen.com/2014/07/did-ura-mnd-contravene-law-on-master-plan/>> (last accessed: 6 August 2014; [archived](http://perma.cc/9RXC-H59A) at <<http://perma.cc/9RXC-H59A>>).

<sup>49</sup> The text of the letter was posted on All Things Bukit Brown’s Facebook page *Heritage Singapore – Bukit Brown Cemetery* by one A. J. Leow at <<https://www.facebook.com/groups/bukitbrown/permalink/659660330770851/>> (last accessed: 6 August 2014).

<sup>50</sup> URA gazettes *Master Plan 2014*, Urban Redevelopment Authority (6 June 2014), online: [URA](http://www.ura.gov.sg/uol/media-room/news/2014/jun/pr14-33.aspx) <<http://www.ura.gov.sg/uol/media-room/news/2014/jun/pr14-33.aspx>> (last accessed: 6 August 2014; [archived](http://web.archive.org/web/20140702202413/http://www.ura.gov.sg/uol/media-room/news/2014/jun/pr14-33.aspx) at <<http://web.archive.org/web/20140702202413/http://www.ura.gov.sg/uol/media-room/news/2014/jun/pr14-33.aspx>>).

and ‘nature areas’ which are only kept intact while not required for development.<sup>51</sup> In comparison, Target 11 of the Aichi Biodiversity Targets adopted pursuant to the United Nations Convention on Biological Diversity,<sup>52</sup> which Singapore ratified in 1995, states:<sup>53</sup>

By 2020, at least 17 per cent of terrestrial and inland water areas, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes.

In reply, the URA noted that:

[L]and is a scarce resource in Singapore, and drafting the Master Plan for land use requires a balanced accommodation of the many competing needs that Singapore has, both as a country and as a city... . Above all, we need to ensure that the fundamental and basic needs of our citizens are met first.

Given these constraints, when assessing the land areas involved in protecting Singapore’s biodiversity the Authority justified taking into account nature areas potentially subject to future development, man-made parks and park connectors, roadside plants, sky-rise greenery, and forested defence training areas.<sup>54</sup>

For a parliamentary sitting the following month on 9 July, Nominated Member of Parliament Eugene Tan filed the following questions:<sup>55</sup>

To ask the Minister for National Development (a) if he can provide a summary of the feedback, objections and representations received on the Draft Master Plan 2013; (b) whether hearings or public inquiries have been held prior to the gazetting of the Master Plan 2014 on 6 June 2014; and (c) if not, whether there are any plans to hold such hearings and public inquiries.

The Minister, Khaw Boon Wan, provided a written response. Among other things, he said:

We conducted one hearing where the feedback raised new matters which were substantive, which we required further clarifications on and which pertained to a new

<sup>51</sup> *Feedback on the Updated URA Master Plan (November 2013)*, *supra* note 45 at 4; Feng Zengkun, “Nature Society Slams Land-use Plan: URA’s Commitment to Conservation Negligible, It Says”, *The Straits Times* (8 January 2014) at B5.

<sup>52</sup> 1760 U.N.T.S. 79, 31 I.L.M. 818 (1992).

<sup>53</sup> Conference of the Parties, *Strategic Plan for Biodiversity 2011–2020* (COP 10 Decision X/2), Annex, online: <<https://www.cbd.int/decision/cop/?id=12268>> (last accessed: 11 August 2015; [archived](#) at <<https://web.archive.org/web/20150620121957/https://www.cbd.int/decision/cop/?id=12268>>).

<sup>54</sup> Hwang Yu Ning (Group Director (Physical Planning), URA), “[Parks, Nature Reserves Important: URA](#)”, *The Straits Times* (11 January 2014), online: <<http://www.ura.gov.sg/uol/media-room/forum-replies/2014/jan/forum14-01.aspx>> (last accessed: 11 August 2015; [archived](#) at <<https://web.archive.org/web/20140705153419/http://www.ura.gov.sg/uol/media-room/forum-replies/2014/jan/forum14-01.aspx>>); and see Feng Zengkun, “URA Defends Biodiversity Commitment”, *The Straits Times* (11 January 2014).

<sup>55</sup> “Feedback and Objections Received for Draft Master Plan 2013”, *Singapore Parliamentary Debates, Official Report* (9 July 2014), vol. 92, no column numbers assigned yet; see also Ministry of National Development, *Written Answer by Ministry of National Development on Draft Master Plan 2013* (9 July 2014), online: [Ministry of National Development](#) <<http://app.mnd.gov.sg/Newsroom/NewsPage.aspx?ID=5483>> (last accessed: 6 August 2014; [archived](#) at <<http://perma.cc/36A5-YXDU>>).

proposal in the Master Plan. With the gazette of the Master Plan, the Draft Master Plan process has been completed.<sup>56</sup>

The MND's response to the objections to the Draft Master Plan, and the Minister's assertion that a hearing can be dispensed with if matters that are not "new" and "substantive" are raised, are surprising as they seem to fly in the face of the relevant legislation, the *Planning (Master Plan) Rules*,<sup>57</sup> which expressly require a hearing unless the objections or representations received are frivolous.<sup>58</sup> The courts had no opportunity to rule on whether the MND had interpreted the Rules correctly as no representor commenced judicial review proceedings to challenge the Minister's decision not to convene a hearing or public inquiry.

This incident highlights two weaknesses of the Master Plan amendment procedure which undermine its utility in ensuring public participation in the process. First, drastic changes to the land can be planned and executed without a prior amendment to the Master Plan. Secondly, based on the manner the MND currently interprets the law, it is not a given that a hearing will be held to allow for public consultation on proposed changes to the Master Plan. In addition, it should be noted that the URA may prepare certified interpretation plans on a scale larger than the maps in the Master Plan to provide more detailed interpretation of the latter.<sup>59</sup> Such plans require no approval by the Minister, and there is no statutory procedure for members of the public to make representations regarding them.

Suffering from a similar shortcoming is the procedure for obtaining approval to develop land<sup>60</sup> (planning permission) and to carry out works within a conservation area<sup>61</sup> (conservation permission).<sup>62</sup> Applications are generally dealt with by the URA,<sup>63</sup> though the Minister may direct the Authority to refer specific applications or a class of applications to him.<sup>64</sup> In general, applications must be decided in conformity with the Master Plan and any relevant certified interpretation plan,<sup>65</sup> unless the Minister approves otherwise in certain circumstances detailed in section 14(2) of the *Planning Act*. It is clear that works requiring planning or conservation permission can have a significant impact on people living or working in the vicinity of the site in question, and perhaps further afield as well. For instance, a material change in the use of a building requires permission, and one can well imagine that if the owner of a building sought permission for it to be modified from a residence to commercial premises, owners and occupants of neighbouring buildings might have something to say about whether permission should be granted. Nonetheless, the *Act* is silent on the matter.

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<sup>56</sup> *Ibid.*

<sup>57</sup> *Supra* note 37.

<sup>58</sup> *PMPR, ibid.*, r. 6(1).

<sup>59</sup> *PA, supra* note 19, s. 7.

<sup>60</sup> The term *development* is defined compendiously in the *PA, ibid.*, s. 3.

<sup>61</sup> The term *works within a conservation area* extends beyond development of land within a conservation area to "any decorative, painting, renovation or other works (whether external or internal) to any building within a conservation area which may affect its character or appearance": *PA, ibid.*, s. 2.

<sup>62</sup> The approval is required by the *PA, ibid.*, s. 12, which also mandates that the URA's permission be sought before land is subdivided. Carrying out works without permission is an offence punishable by a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction: s. 12(4). In addition, a convicted offender may be ordered to remove from the land property and materials used in connection with the offence: s. 12(5).

<sup>63</sup> *PA, ibid.*, s. 13.

<sup>64</sup> *PA, ibid.*, s. 21.

<sup>65</sup> *PA, ibid.*, s. 14(1).

This means an aggrieved person must attempt to seek a remedy either on the basis of administrative law rules articulated by courts over time as part of the common law, or the *Constitution*.<sup>66</sup> As regards administrative law, since exercises of power by the URA and the Minister under the *Act* spring from a legal source and serve public functions, they are amenable to judicial review by the High Court.<sup>67</sup> Judicial review of administrative action is the means by which the Court asserts jurisdiction to supervise public authorities;<sup>68</sup> the Court may, for instance, issue a quashing order to quash actions and decisions taken by authorities in breach of administrative law, a prohibiting order to prevent them from acting contrary to administrative law rules, and/or a mandatory order to direct that they reconsider matters in light of the correct rules. These are known as prerogative orders. However, people potentially affected by development work only remotely – for example, those who feel a new building will blight the landscape and thus wish to contest any planning permission for it, but who do not live near the proposed site – may have difficulty showing they have sufficient standing to apply for judicial review. This is examined in Part II.A.3 below.

In addition, the Court's role in administrative law is circumscribed, as Justice V. K. Rajah noted in *Wong Keng Leong Rayney v. Law Society of Singapore*:<sup>69</sup>

Judicial review is almost invariably limited to examining, *inter alia*, whether the tribunal has exceeded its jurisdiction, whether there has been an abuse of discretion or a failure of natural justice, and whether the tribunal has acted irrationally, unreasonably or in bad faith. In other words, it hinges on the legality of the decision. ... [T]he reviewing court cannot substitute its decision for that of the administrative body under review. This is because the task of determining the rights of the parties has been statutorily conferred on the administrative body, not the court. The reviewing court may declare that the task has been performed badly in law but it cannot take the further step of actually performing the task itself.

To my knowledge, there are no reported cases involving a challenge by a third party against development work being approved. A 2009 case with different facts, *Borissik v. Urban Redevelopment Authority*,<sup>70</sup> illustrates how difficult it is for such a claim to succeed. In the case, the applicant took out judicial review proceedings against the URA because the Authority had declined to approve renovation works which she and her husband wished to carry out on their home. The High Court dismissed the application, holding that, among other things, the applicant had failed to prove the URA had taken into account extraneous objectives, behaved irrationally, or made any representation to the applicant giving rise to a legitimate expectation that permission to execute the works would be given. Since the URA had not acted in breach of any administrative law rule, it was not for the Court to determine whether the works should have been approved or not – that was a decision for the Authority alone.

Let us assume that the URA has approved an application to build a Mass Rapid Transit (MRT) station in a location that some people find difficult to access. Might an aggrieved person bring a case against the Authority alleging that he or she has been discriminated against, in the manner that the plaintiffs in the Bus Riders Union case

<sup>66</sup> *Supra* note 13.

<sup>67</sup> *UDL Marine (Singapore) Pte. Ltd. v. Jurong Town Corporation* [2011] 3 S.L.R. [Singapore Law Reports] 94 at 109–114, paras. 48–61 (H.C.); *Yeap Wai Kong v. Singapore Exchange Securities Trading Ltd.* [2012] 3 S.L.R. 565 at 569–577, paras. 4–28 (H.C.).

<sup>68</sup> *Ng Chye Huey v. Public Prosecutor* [2007] 2 S.L.R.(R.) [Singapore Law Reports (Reissue)] 106 (C.A.).

<sup>69</sup> [2006] 4 S.L.R.(R.) 934 (H.C.). See also *Yeap Wai Kong v. Singapore Exchange Securities Trading Ltd.* [2012] 3 S.L.R. 565 at 569, para. 3 (H.C.).

<sup>70</sup> *Borissik v. Urban Redevelopment Authority* [2009] 4 S.L.R.(R.) 92 (H.C.).

did?<sup>71</sup> There is no anti-discrimination legislation in Singapore akin to Title VI of the *Civil Rights Act of 1964*, so a judicial review application might have to be brought alleging a breach of Article 12(1) of the *Constitution*, which states: “All persons are equal before the law and entitled to the equal protection of the law.” Current case law indicates that the courts apply a legal test to Article 12(1) which is highly deferential to the executive and legislative branches of government. In order to establish that Article 12(1) has been infringed, an applicant must show that he or she belongs to a class of persons that has been treated differently from one or more comparable classes; and that either his or her class has not been clearly defined, or there is no rational relation between the class and the object of the law.<sup>72</sup> Most cases are likely to turn on the rational relation limb of the test, which is not difficult for the Government to satisfy as a mere rationality standard is applied, particularly as the Court of Appeal has said that an applicant must rebut a “strong presumption of constitutionality”<sup>73</sup> in order to succeed. For example, if the URA can show that its approval for the construction of an MRT station in a particular place is not irrational but based on certain grounds such as the transportation needs of people living in the vicinity, then its decision cannot be regarded as violating Article 12(1). Indeed, in the recent decision of *Lim Meng Suang v. Attorney-General*,<sup>74</sup> the Court of Appeal expressed the view that:

[a]lthough the absence of such a rational relation can take many forms, it seems to us that the requisite rational relation will – more often than not – be found. This is because... there is *no* need for a *perfect* relation or ‘*complete* coincidence’ [emphasis added] between the differentia in question and the purpose and object of the statute concerned. ... [T]he relation need only be a *rational* one.<sup>75</sup>

*Eng Foong Ho v. Attorney-General*<sup>76</sup> involved a claim by devotees of a temple espousing Buddhist, Confucian and Taoist beliefs that the Collector of Land Revenue had violated Article 12(1) by compulsorily acquiring the land on which the temple stood pursuant to the *Land Acquisition Act*,<sup>77</sup> but leaving nearby land belonging to a Christian church and a Hindu mission untouched. The reason provided for the acquisition was the construction and comprehensive redevelopment of the MRT’s Circle Line. The Court of Appeal noted that the appellants had conceded that the Collector had acted in good faith and had not adduced any evidence of arbitrary action on the Collector’s part.<sup>78</sup> It found that the Collector’s decision had been “based solely on planning considerations”.<sup>79</sup> There had been no “intentional and arbitrary discrimination”<sup>80</sup> by the Collector. This stringent standard is favourable to the Government, and hence not easy for an applicant to establish.

I referred earlier to the possibility that spatial justice might be an aspect of article 9(1) of the *Constitution*, which provides that “[n]o person shall be deprived of his life or personal liberty save in accordance with law”. This approach has been ruled out, at least for the time being, by the Court of Appeal. In *Lim Meng Suang*, the Court

<sup>71</sup> *Supra* note 9.

<sup>72</sup> *Public Prosecutor v. Taw Cheng Kong* [1998] 2 S.L.R.(R.) 489 at 507–508, para. 58 (C.A.); *Lim Meng Suang v. Attorney-General* [2015] 1 S.L.R. 26 at 48, para. 60 (C.A.).

<sup>73</sup> *Taw Cheng Kong*, *ibid.* at 509, para. 60; see also *Lim Meng Suang*, *ibid.* at para. 4.

<sup>74</sup> *Supra* note 72.

<sup>75</sup> *Ibid.* at para. 68 (emphasis original).

<sup>76</sup> *Eng Foong Ho v. Attorney-General* [2009] 2 S.L.R.(R.) 542 (C.A.) [*Eng Foong Ho*].

<sup>77</sup> *Land Acquisition Act* (Cap. 152, 1985 Rev. Ed.) [*LAA*].

<sup>78</sup> *Eng Foong Ho*, *supra* note 76 at 553, para. 31.

<sup>79</sup> *Ibid.* at 555, para. 35.

<sup>80</sup> *Ibid.* at 553, para. 30.

said that *personal liberty* in the article “refers only to the personal liberty of a person from unlawful incarceration or detention”, and that “[a]lthough the phrase ‘life’ has not been authoritatively interpreted by the Singapore courts, it should be interpreted narrowly in accordance with the jurisprudence on ‘personal liberty’ and Art 9’s context and structure”.<sup>81</sup> It is worth noting, though, that the High Court case<sup>82</sup> relied on by the Court of Appeal for this narrow definition of personal liberty cited no authority for it. It is thus conceivable that the Court of Appeal might be persuaded to adopt a more expansive interpretation of the terms *life* and *personal liberty* in a future case, perhaps along the lines of the Malaysian Court of Appeal’s judgment in *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan*.<sup>83</sup> There, it was held that the word *life* in Article 5(1) of the *Federal Constitution of Malaysia*, which is identical to Singapore’s Article 9(1), includes elements that form the quality of life including, for instance, the right to live in a reasonably healthy and pollution-free environment.<sup>84</sup> It is easy to see how a right to the city might be encompassed within such a broadly interpreted right to life. Unfortunately, it does not seem that such an approach will be embraced by the Singapore courts any time soon.

Under administrative and constitutional law in Singapore as it currently stands, people may be put off by the difficulty and cost of seeking judicial review of a grant of planning or conservation permission. Given that Parliament has seen fit to lay down a procedure enabling objections and representations to be made about proposals to amend the Master Plan, it is submitted that a similar procedure should be introduced for applications for development work as well. One may wonder why such a procedure was not introduced in the first place. Perhaps there was a concern that development would be bogged down by unmeritorious objections to applications. In recent years, there have been instances of people objecting to plans to site childcare centres, foreign workers’ dormitories and nursing homes near their residences, which has been condemned as evidence that an undesirable “not in my backyard” attitude is spreading.<sup>85</sup> On the other hand, when an objection or representation to a proposed amendment to the Master Plan has been made, the Minister need not convene a hearing or public inquiry if he or she deems the objection or representation frivolous.<sup>86</sup> There is no reason why a similar power cannot be conferred on the authority responsible for approving development applications. To ensure the decision-making process is evidence-based and transparent, the procedure must be effective – its utility

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<sup>81</sup> *Lim Meng Suang*, *supra* note 72 at para. 45.

<sup>82</sup> *Lo Pui Sang v. Mamata Kapildev Dave* [2008] 4 S.L.R.(R.) 754 at 760, para. 6 (H.C.). In *Lim Meng Suang*, the Court of Appeal additionally cited its previous decision *Tan Eng Hong v. Attorney-General* [2012] 4 S.L.R. 476 at 524, para. 120, which had also cited *Lo Pui Sang*.

<sup>83</sup> *Tan Teck Seng v. Suruhanjaya Perkhidmatan Pendidikan* [1996] 1 M.L.J. 261 (C.A.).

<sup>84</sup> *Tan Tek Seng*, *ibid.* at 288.

<sup>85</sup> See, for example, Melissa Sim, “Foreign Workers? Not in My Backyard” *The Straits Times* (3 September 2008) at 25; Chua Lee Hoong, “Power, Pride and Prejudice” *The Straits Times* (6 September 2008) at 2; Lin Yanqin, “A Dangerous Divide; Mah: Stop Demonising Workers, Residents and Start Accepting Them” *Today* (18 September 2014) at 1; Cheryl Ong and Shuli Sudderuddin, “‘Not in My Backyard’ Attitude: How MPs Handle It” *The Straits Times* (9 February 2012); Huang Shou Chyuan, Letter, “Work Together against Parochial Reactions” *Today* (11 February 2012) at 10; Goh Sui Noi, “So in Whose Backyard, Then?” *The Straits Times* (23 February 2012); Li Xueying, “PM Lee Flags Two Worries” *The Straits Times* (5 April 2012) (“Prime Minister Lee Hsien Loong yesterday identified two worrying trends he sees in Singapore, warning that they stand in the way of a cohesive community. ... [One is] people saying ‘no’ to having public facilities in their neighbourhoods, or what has been dubbed the Not In My Backyard, or Nimby, syndrome”); Editorial, “Malaise of Squabbles over Spaces” *The Straits Times* (9 June 2012).

<sup>86</sup> *PMPR*, *supra* note 37, r. 6(1).

is diminished if representations can be dismissed without an inquiry at the authorities' discretion.

## 2. Compulsory Acquisition of Land

Singapore has had legislation enabling the Government to compulsorily acquire land held in private hands since the 19th century.<sup>87</sup> The justification for such legislation is that the Government must have the ability to acquire private lands for the public good without creating too much of a financial burden on the public purse.<sup>88</sup> Hence, until 2007, the compensation payable by the Government was the value of the land at the date when it was gazetted for acquisition or at a date specified in the *Land Acquisition Act*,<sup>89</sup> whichever was lower. As the statutory dates were only revised at intervals of several years, most of the time the Government only needed to pay a lower sum for property that had risen in price. The widest disparity was between 1973 and 1986, when the statutory date was not revised for 13 years. Subsequently, the date was revised after six-year and three-year intervals. With effect from 12 February 2007, the *Act* was amended to peg the rate of compensation at the market value which a willing purchaser would pay for the land as at the date of gazetting.<sup>90</sup>

To acquire land compulsorily, the President, acting on the advice of the Cabinet or the Minister for National Development,<sup>91</sup> publishes a notice in the *Gazette* declaring that the land is required for a public purpose; by any person, corporation, or statutory board for any work or undertaking which “in the opinion of the Minister, is of public benefit or of public utility or in the public interest”; or for residential, commercial, or industrial purposes.<sup>92</sup> The *Act* states that such a notification is conclusive evidence that the land is required for the specified purpose,<sup>93</sup> which means that the court is required to regard that fact as proved and cannot permit evidence to be given to disprove it.<sup>94</sup> There is no statutory procedure for interested persons to challenge the necessity for the acquisition.<sup>95</sup> Nonetheless, the Court of Appeal has held that an acquisition may be challenged in the courts on the ground that it has been carried out in bad faith, for instance, if land was acquired for a specified purpose but nothing has been done for a long time to effect the purpose and the Government provides no proper explanation for its inaction.<sup>96</sup> However, it is not possible to oppose compulsory acquisition of land on the basis that it violates a right to property. No such right exists in the *Constitution*, and since the Government intentionally omitted such a provision from the *Constitution* when Singapore gained full independence from Malaysia in 1965 in order to ensure that the constitutionality of the *Land Acquisition Act* and

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<sup>87</sup> For a history of land acquisition legislation in Singapore, see generally Bryan Chew *et al.*, “Compulsory Acquisition of Land in Singapore: A Fair Regime?” (2010) 22 *Sing. Acad. L.J.* 166 at 168–170, paras. 5–11.

<sup>88</sup> *Ibid.* at 167, para. 3.

<sup>89</sup> *Supra* note 77.

<sup>90</sup> Chew *et al.*, *supra* note 87 at 170–173, paras. 12–21.

<sup>91</sup> *Constitution*, *supra* note 12, Art. 21(1).

<sup>92</sup> *LAA*, *supra* note 77, s. 5(1).

<sup>93</sup> *Ibid.*, s. 5(3).

<sup>94</sup> *Evidence Act* (Cap. 97, 1997 Rev. Ed.), s. 4(3).

<sup>95</sup> Tan, Tang, and Low, *supra* note 18 at 761, para. 23.32.

<sup>96</sup> *Teng Fuh Holdings Pte. Ltd. v. Collector of Land Revenue* [2007] 2 S.L.R.(R.) 568 at 575–578, paras. 24–41 (C.A.).

acquisitions made pursuant to it,<sup>97</sup> it would not be appropriate for the court to infer the existence of this right from the constitutional text.

The legal means available for challenging the compulsory acquisition of land are therefore limited, but this is in line with the objective behind the legislation. There is no doubt that the *Act* wrought hardship in some past cases because of the low level of compensation the Government was required to pay; this was sometimes ameliorated through additional *ex gratia* payments and payments to cover removal and relocation expenses.<sup>98</sup> Now that the Government must pay compensation at the market rate, this aspect of unfairness has been removed. In any case, given the scarcity of land in Singapore, large-scale infrastructural works such as public housing, the MRT network and expressways would not have been achievable without the *Act*.

### 3. Preservation of Monuments

An application for conservation permission is required if development works are sought to be made with regard to national monuments,<sup>99</sup> and when deciding whether permission should be granted the URA will take into account any conservation guidelines relating to monuments that have been issued by the National Heritage Board (NHB).<sup>100</sup> The power of the Minister for Culture, Community and Youth, following consultation with the NHB, to declare sites as national monuments<sup>101</sup> thus impacts the built environment as it may restrict the extent to which development can occur. At the same time, people interested in ensuring that buildings and sites of heritage value are preserved may feel aggrieved if the Minister decides not to make preservation orders in respect of them.

The scheme for preservation of national monuments is laid out in the *Preservation of Monuments Act*,<sup>102</sup> a statute dating back to 1970. As of 7 August 2015, there were 70 national monuments.<sup>103</sup> Before the Minister issues a preservation order in respect of a monument,<sup>104</sup> the NHB is bound to give notice of the Minister's intention to do so to "the owner and occupier of the monument and any land adjacent

<sup>97</sup> *Republic of Singapore Independence Act 1965* (No. 9 of 1965, 1985 Rev. Ed.), s. 6(3) ("The following provisions of the Constitution of Malaysia shall cease to have effect in Singapore: ... Article 13..."); Lee Kuan Yew (Prime Minister), speech during the Second Reading of the Constitution (Amendment) Bill, *Singapore Parliamentary Debates, Official Report* (22 December 1965), vol. 24, cols. 435–436.

<sup>98</sup> Chew *et al.*, *supra* note 87 at 176–178, para. 26–31.

<sup>99</sup> *Master Plan Written Statement 2014*, *supra* note 26 at para. 1.1.3(ii).

<sup>100</sup> *Ibid.* at para. 10.1(i)(b). Such guidelines are issued pursuant to the *Preservation of Monuments Act* (Cap. 239, 2011 Rev. Ed.) [PMA], s. 4(c).

<sup>101</sup> PMA, *ibid.*, s. 11.

<sup>102</sup> *Supra* note 100.

<sup>103</sup> National Heritage Board, *National Monuments* ([7 August 2015]), online: [National Heritage Board <http://www.nhb.gov.sg/places/sites-and-monuments/national-monuments>](http://www.nhb.gov.sg/places/sites-and-monuments/national-monuments) (last accessed: 11 August 2015; [archived](https://web.archive.org/web/20150914161725/http://www.nhb.gov.sg/places/sites-and-monuments/national-monuments) at <https://web.archive.org/web/20150914161725/http://www.nhb.gov.sg/places/sites-and-monuments/national-monuments>).

<sup>104</sup> *Monument* is defined in the PMA, *supra* note 100, s. 2, as "the whole or any part of, or the remains of – (a) any building, structure, erection, statue, sculpture or other work, whether above or below the surface of the land, and any cave or excavation; (b) any site comprising the remains of any such building, structure, erection, statue, sculpture or other work or of any cave or excavation; or (c) any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other movable structure or part thereof which neither constitutes nor forms part of any work which is a monument within paragraph (a), and includes any machinery attached to or forming part of a monument which cannot be detached from the monument without being dismantled". A *national monument* is "any monument that is subject to a preservation order and includes any land containing or adjacent to such monument that is specified in the preservation order": *ibid.*



thereto which will be affected” by the making of the order, giving such persons a reasonable period within which to submit any objections to the NHB. The Board must consider the objections and make recommendations on them to the Minister.<sup>105</sup> The same procedure applies when a preservation order is sought to be amended or revoked.<sup>106</sup> Given the wording of the relevant provisions of the *Act*, a person owning or occupying land adjacent to a monument that will be affected by the making, amendment or revocation of a preservation order is entitled to rely on the statutory procedure; a person who lives further afield may not. The procedure is also inapplicable where the Minister has not manifested any intention to issue or alter a preservation order, for instance, if people wish to call for a particular site to be declared a national monument.

Once again, a person in this position would have to initiate proceedings for judicial review of the Minister’s decision to make a preservation order or to decline to do so. Apart from the difficulty of establishing that the Minister has acted contrary to administrative law rules, which was discussed earlier, another potential complication is whether the person can demonstrate that he or she has sufficient standing to bring a case against the Minister. This is a pertinent problem where monuments are concerned because people interested in seeing a monument preserved may not reside anywhere near it. It has been said that the requirement of standing tries to resolve the conflict between the “desirability of encouraging people to participate actively in the enforcement of the law” and the “undesirability of encouraging meddlesome interlopers invoking the jurisdiction of the courts in matters in which they are not concerned”.<sup>107</sup>

The ease to which judicial review can be sought depends on whether the courts take a narrow or broad approach to standing. The narrow approach is exemplified by a U.K. case, *R. v. Secretary of State for the Environment, ex parte Rose Theatre Trust Co.*<sup>108</sup> While a site in Central London was being developed, the remains of The Rose theatre were uncovered. This was a highly significant find as most of Christopher Marlowe’s plays and two of William Shakespeare’s were first staged in this Elizabethan theatre. To lobby for preservation of the site, a group of “persons of undoubted expertise and distinction”<sup>109</sup> in archaeology, theatre, literature, and other fields, as well as residents and their local Member of Parliament, came together to form the Rose Theatre Trust Company. The company asked the Environment Secretary to protect the theatre by declaring it an ancient monument under the *Ancient Monuments and Archaeological Areas Act 1979*,<sup>110</sup> but he declined. Thus, the company applied to court for judicial review of the Secretary of State’s decision not to list the theatre.

However, the judge held that it did not have sufficient interest to bring the case. He said that although one does not need to have a direct financial or legal interest in a matter to have standing, the *Act* neither expressly nor impliedly gave the company a greater right or expectation than any other citizen to have a decision taken lawfully. The company would have possessed sufficient interest if the statute had, for example, stated that a party in its position had a legal right to require the Secretary of State to perform a particular duty. However, the statute did not have that effect. The judge

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<sup>105</sup> *PMA, ibid.*, s. 11(7).

<sup>106</sup> *Ibid.*

<sup>107</sup> Lord Woolf, Jeffrey Jowell, and Andrew Le Sueur, *De Smith’s Judicial Review* (6th ed.) (London: Sweet & Maxwell, 2007) at 69–70, para. 2-002.

<sup>108</sup> *R. v. Secretary of State for the Environment, ex parte Rose Theatre Trust Co.* [1990] 1 Q.B. 504 (England & Wales H.C.) (Q.B.) [*ex parte Rose Theatre Trust*].

<sup>109</sup> *Ibid.* at 521.

<sup>110</sup> *Ancient Monuments and Archaeological Areas Act 1979* (U.K.), c. 46.

acknowledged it was true that if a particular individual or group was not found to have standing in such cases, certain administrative decisions would go unchallenged even if they were clearly unlawful. However, the law did not require the courts to be there for every individual interested in litigating the legality of an administrative decision. The U.K. Parliament could have given such a wide right of legal access to people, but had not done so.<sup>111</sup>

*Ex parte Rose Theatre Trust* is no longer good law in the U.K., and is treated as an exceptional case by some commentators.<sup>112</sup> Currently, British courts take a broad approach to standing. For instance, in *R. v. Secretary of State for Foreign and Commonwealth Affairs, ex parte World Development Movement Ltd.*,<sup>113</sup> a divisional court writing in 1995 recognized that over the last 12 years judges had taken “an increasingly liberal approach to standing”, and was able to say that “the merits of the challenge are an important, if not dominant, factor when considering standing”.<sup>114</sup> Thus, unless a claim is entirely without merit, an applicant should not be denied standing simply because he or she has no stronger right than any other citizen to ensure that a public authority complies with the law. Otherwise, if every citizen shares the same interest in the matter, no one is entitled to bring a case. “[T]he real question is whether the applicant can show some substantial default or abuse, and not whether his personal rights or interests are involved”.<sup>115</sup>

A 2014 Court of Appeal decision, though, shows that the Singapore courts have not eschewed the narrow approach in *ex parte Rose Theatre Trust*. *Jeyaretnam Kenneth Andrew v. Attorney-General*<sup>116</sup> arose out of a claim by the opposition politician Kenneth Jeyaretnam that the Government had infringed Article 144 of the *Constitution* by not seeking the President’s concurrence for a contingent loan of US\$4 billion it had made to the International Monetary Fund through the Monetary Authority of Singapore. The Court said he lacked standing to bring the case. To possess standing, a person must be able to allege either that a public authority has violated a personal or private right enjoyed by him or her; or a public right enjoyed by everyone in common, but that the person has suffered ‘special damage’<sup>117</sup> – that is, damage to a greater extent or of a different nature compared to others.<sup>118</sup> However, in the Court’s view, Jeyaretnam had brought his claim purely in the public interest, and not because

<sup>111</sup> *Ex parte Rose Theatre Trust*, *supra* note 108 at 521.

<sup>112</sup> The case has been “doubted, distinguished and not followed”: Woolf, Jowell, and Le Sueur, *supra* note 107 at 76, para. 2-103. It was distinguished in *R. v. Poole Borough Council, ex parte Beebee* [1991] 2 Plan. L.R. 27, [1991] J. Plan. L. 643 (England & Wales H.C.) (Q.B.), and *R. v. Somerset County Council, ex parte Dixon* [1998] Env. L.R. 111 at 121 (England & Wales H.C.) (Q.B.); and not followed in *R. v. HM Inspectorate of Pollution, ex parte Greenpeace (No. 2)* [1994] W.L.R. 570 (England & Wales C.A.). According to [Henry] William [Rawson] Wade and Christopher [F.] Forsyth, *Administrative Law*, 10th ed. (Oxford: Oxford University Press, 2009) at 597 [Wade and Forsyth, 10th Ed.], since the judge held the applicants had no case on the merits the judgment is best regarded as having been decided on this ground, otherwise no one would have standing in cases of this nature and the law could be violated by public authorities with impunity.

<sup>113</sup> [1995] 1 W.L.R. 386 (England & Wales H.C.) (Div. Ct.).

<sup>114</sup> *Ibid.* at 395.

<sup>115</sup> *Ibid.*, citing William Wade & Christopher Forsyth, *Administrative Law*, 7th ed. (Oxford: Clarendon Press, 1994) at 712; now see Wade & Forsyth, *Administrative Law*, 10th ed., *supra* note 112, at 592–593.

<sup>116</sup> *Jeyaretnam Kenneth Andrew v. Attorney-General* [2014] 1 S.L.R. 345 (C.A.). The Court did not actually refer to *ex parte Rose Theatre Trust* in its judgment.

<sup>117</sup> *Ibid.* at 363, pars. 46–47.

<sup>118</sup> *Vellama d/o Marie Muthu v. Attorney-General* [2013] 4 S.L.R. 1 at 19, para. 40 (C.A.), citing Peter Cane, “The Function of Standing Rules in Administrative Law” (1980) Pub. L. 303 at 313–314.

of any breach of a private or public right.<sup>119</sup> While in rare cases a court might exercise discretion to allow someone in *Jeyaretnam*'s position to bring a case because an authority's breach of public duty "is of sufficient gravity such that it would be in the public interest for the courts to hear the case", this was not established on the facts as *Jeyaretnam* had wrongly interpreted Article 144.<sup>120</sup>

In view of the *Jeyaretnam* decision, it will be hard for people to demonstrate they have standing to initiate judicial review proceedings in respect of monuments, except perhaps in cases where the relevant legal procedures have been blatantly contravened by the authorities. Consequently, I submit it is desirable for the *Preservation of Monuments Act* to be updated to allow interested persons other than owners and occupiers of monuments and adjacent land to make representations to the Minister.

## B. LAWS RELATING TO THE TRANSIENT USE OF PUBLIC SPACE

It will probably come as no surprise that the transient use of public space is comprehensively regulated in Singapore. We will focus on using public areas for speeches and assemblies such as demonstrations and protests, and the two primary statutes controlling such activities: the *Public Entertainments and Meetings Act* [PEMA]<sup>121</sup> and the *Public Order Act* [POA].<sup>122</sup> Rather amusingly, a demonstration, display, or parade in a place to which the public or any class of the public has access whether gratuitously or otherwise is defined as a "public entertainment",<sup>123</sup> even though it is for a serious purpose rather than for amusement. Public entertainment cannot be provided without a licence issued by the police.<sup>124</sup> Following an amendment to the *Act* effected by the POA,<sup>125</sup> lectures, talks, addresses, debates or discussions are not public entertainments<sup>126</sup> and hence require no PEMA licence.

Rather, such events are now regulated under the POA, which generally requires a permit to be obtained from the Commissioner of Police before any public assembly or public procession is held.<sup>127</sup> An assembly is defined by the *Act* as meaning:

... a gathering or meeting (whether or not comprising any lecture, talk, address, debate or discussion) of persons the purpose (or one of the purposes) of which is —

- (a) to demonstrate support for or opposition to the views or actions of any person, group of persons or any government;
- (b) to publicise a cause or campaign; or
- (c) to mark or commemorate any event,

<sup>119</sup> *Jeyaretnam*, *supra* note 116 at 365, para. 51.

<sup>120</sup> *Ibid.* at 371, para. 64.

<sup>121</sup> *Public Entertainments and Meetings Act* (Cap. 257, 2001 Rev. Ed.) [PEMA].

<sup>122</sup> *Public Order Act* (Cap. 257A, 2012 Rev. Ed.) [POA].

<sup>123</sup> PEMA, s. 2(1) (definition of *public entertainment*) read with the Sched., para. 2(a).

<sup>124</sup> PEMA, s. 3. For the meaning of *Licensing Officer*, see *ibid.*, s. 2(1) (definition of *Licensing Officer*), s. 4 (appointment of the Licensing Officer and Assistant Licensing Officers by the Minister for Home Affairs), and the notification entitled *Appointment of Licensing Officers and Assistant Licensing Officers* (Cap. 257, N 2, 2002 Rev. Ed.).

<sup>125</sup> *Public Order Act 2009* (No. 15 of 2009), s. 49(3).

<sup>126</sup> PEMA, *supra* note 121, Sched., para. 3(f).

<sup>127</sup> POA, *supra* note 122, s. 7.

and includes a demonstration by a person alone for any such purpose referred to in paragraph (a), (b) or (c)...<sup>128</sup>

#### A procession is:

a march, parade or other procession (whether or not involving the use of vehicles or other conveyances) —

- (a) comprising 2 or more persons gathered at a place of assembly to move from that place substantially as a body of persons in succession proceeding by a common route or routes; and
- (b) the purpose (or one of the purposes) of which is —
  - (i) to demonstrate support for or opposition to the views or actions of any person, group of persons or any government;
  - (ii) to publicise a cause or campaign; or
  - (iii) to mark or commemorate any event,

and includes any assembly held in conjunction with such procession, and a march by a person alone for any such purpose referred to in paragraph (b)(i), (ii) or (iii)...<sup>129</sup>

Public assemblies and processions in the vicinity of the Istana, Parliament House, the Supreme Court, the Old Supreme Court Building, City Hall, the Padang, and the State Courts are prohibited.<sup>130</sup>

The Government maintains a blanket ban on, and no police permit will be issued for, cause-based assemblies, demonstrations, speeches and other events in outdoor venues, except in Speakers' Corner in Hong Lim Park.<sup>131</sup> For events there, no permit need be applied for; the only requirement is pre-registration with the Commissioner of Parks and Recreation<sup>132</sup> through the National Parks Board website. A similar concession applies to public assemblies held inside buildings or other enclosed premises where the organizers and speakers are all Singapore citizens; the event does not deal with any matter "which relates (directly or indirectly) to any religious belief or religion, or any matter which may cause feelings of enmity, hatred, ill-will or hostility between different racial or religious groups in Singapore"; and the organizer or an authorized agent of the organizer is present at all times.<sup>133</sup>

These regulations remove assemblies and processions from highly visible open-air locations to indoor venues and to Speakers' Corner. It has been remarked that "Speakers' Corner is quite symbolic... in simultaneously preserving a literal 'space' for practicing free speech, while limiting or 'cornering' it in that space", and is thus an "exercise in tokenism".<sup>134</sup> The regulations therefore detract from the right to the city

<sup>128</sup> *Ibid.*, s. 2(1) (definition of *assembly*).

<sup>129</sup> *Ibid.* (definition of *procession*). The terms *public assembly*, *public place* and *public procession* are also defined in this provision.

<sup>130</sup> *Public Order (Prohibited Areas) Order 2009* (S 490/2009) (as amended by the *Public Order (Prohibited Areas) (Amendment) Order 2014* (S 140/2014)), para. 2 and the Sched. [PO(PA)O].

<sup>131</sup> *Public Entertainments and Meetings (Speakers' Corner) (Exemption) (No. 2) Order 2015* (S 551/2015); *Public Order (Unrestricted Area) (No. 2) Order 2015* (S 552/2015).

<sup>132</sup> *Parks and Trees Regulations* (Cap. 216, Rg 1, 2006 Rev. Ed.), reg. 8(3).

<sup>133</sup> PO(PA)O, *supra* note 130 at para. 3; *Public Order (Exempt Assemblies and Processions) Order 2009* (S 489/2009), First Sched., para. 4.

<sup>134</sup> Li-ann Thio, "Singapore: Regulating Political Speech and the Commitment 'to Build a Democratic Society'" (2003) 1(3) *Int'l J. Const. L.* 516–524 at 522.

which, it will be recalled, includes “the right to use of the center, a privileged place”.<sup>135</sup> On its part, the Government has justified its policy of not permitting events to be held outdoors<sup>136</sup> (except at Speakers’ Corner) on the ground that allowing demonstrations and protest marches to be held simultaneously with major events such as the Annual Meetings of the International Monetary Fund and the World Bank Group staged in Singapore in September 2006 will divert law enforcement from their vital task of ensuring the security of the events. Furthermore, protests that begin peacefully can turn violent. Of particular concern are events that may cause tensions between ethnic groups: “The worst race riots in Singapore history began as peaceful processions. Hence even one such violent riot in Singapore with its attendant loss of lives, injury to persons, and damage to property is one incident too many. Deeper than the physical damage are the scarred relations between communal groups and the erosion of the sense of order and security which Singaporeans value and cherish.”<sup>137</sup> In August 2014, a lesbian, gay, bisexual and transgender (‘LGBT’) pride event called the Pink Run to be held at the Marina Promenade Park was denied a permit on the ground that LGBT advocacy “remains a socially divisive issue”; the applicant was advised to have the event at Speakers’ Corner. A permit for a similar event had also been turned down in 2007. Responding to media queries, the police said that Speakers’ Corner “is the designated public place for such activities, to avoid inconveniencing the general public, or leading to contention or potential public order issues”.<sup>138</sup> One wonders, though, whether such a constant distrust of Singaporeans deprives them of the opportunity to mature as a society and to show they can express their views without causing mayhem.

The regulatory scheme established by the POA has not yet been subject to constitutional challenge, but it seems unlikely that one would succeed as the PEMA has been determined not to violate the right to freedom of speech and expression guaranteed to citizens by Article 14(1)(a) of the *Constitution*.<sup>139</sup> This right, and the right to freedom of assembly guaranteed by Article 14(1)(b), are subject to the limitations expressed in Article 14(2):

Parliament may by law impose —

- (a) on the rights conferred by clause (1)(a), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and

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<sup>135</sup> *Supra* note 7.

<sup>136</sup> The appellants in *Yap Keng Ho v. Public Prosecutor* [2011] 3 S.L.R. 66 (H.C.), who had been charged with taking part in a public procession without a permit contrary to the *Miscellaneous Offences (Public Order and Nuisance) (Assemblies and Processions) Rules* (Cap. 184, R 1, 2000 Rev. Ed.) (repealed), argued that the comprehensive ban against outdoor events violated Art. 14(1)(a), and Art. 12(1) because the National Trades Union Congress and the Consumer Association of Singapore had been allowed to conduct marches. The Court dismissed the claims, stating that they could not rely upon the ban as a defence, and that the appellants should have commenced judicial review proceedings against the refusal by the police to issue a permit. In addition, the appellants had not adduced sufficient evidence to show any discrimination: *ibid.* at 73–77, paras. 11–21.

<sup>137</sup> Toh Yong Chuan (Deputy Director, International and Corporate Relations Division, Ministry of Home Affairs), Letter, “Govt Explains Stand on ‘Peaceful’ Demos” *The Straits Times* (25 October 2007) at 48.

<sup>138</sup> Charissa Yong, “Police Reject ‘Pink Run’ Application” *The Straits Times* (15 August 2014) at B7.

<sup>139</sup> *Jeyaretnam Joshua Benjamin v. Public Prosecutor* [1989] 2 S.L.R.(R.) 419 (H.C.); *Chee Soon Juan v. Public Prosecutor* [2003] 2 S.L.R.(R.) 445 (H.C.); *Chee Soon Juan v. Public Prosecutor* [2011] 2 S.L.R. 940 (H.C.).

restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence;

- (b) on the right conferred by clause (1)(b), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof or public order...

In *Chee Siok Chin v. Minister for Home Affairs*,<sup>140</sup> the High Court stated *obiter* that the term *necessary or expedient* confers upon Parliament “an extremely wide discretionary power and remit that permits a multifarious and multifaceted approach towards achieving any of the purposes specified in Art 14(2) of the Constitution”. Since Article 14(2) does not mention that the restrictions that Parliament may impose have to be reasonable, the court need not apply any balancing or proportionality test to ensure that the rights protected by Article 14(1) have not been excessively curtailed in pursuance of some other public interest. The court’s only task is to establish a nexus between the object of the restrictive law in question and one of the permissible subjects stipulated in Article 14(2).<sup>141</sup> Based on this reasoning, the PEMA and POA are no doubt justifiable as restrictions on the rights to free speech and assembly in the interest of public order. Such a constricted interpretation of Article 14(2) leaves little space for the courts to uphold these fundamental liberties, as Parliament essentially has a free hand to enact restrictive legislation.

## CONCLUSION

Soja’s concept of spatial justice is closely related to Lefebvre’s right to the city, which asserts the right of city dwellers to have a say in “the space and time of their activities in the urban area” as well as “the right to use of the center” of the city.<sup>142</sup> The use of the term *right* appears to link spatial justice to the idea of human rights, but it is submitted that spatial justice is a concept more philosophical than legal. Nonetheless, it is useful as a yardstick against which the degree of public participation in land use decisions in Singapore can be measured.

Where laws regulating the built environment are concerned, the *Planning Act* expressly allows for public participation at a macro level, as there exists a procedure for views of members of the public to be sought on proposed amendments to the Master Plan, though doubts about the procedure’s effectiveness exist. The non-statutory practice of drawing up Concept Plans also features extensive public consultation. However, at the micro level, when decisions are made about whether development work should be approved, the legislation is silent on participation by persons other than the applicants themselves. Similarly, under the *Preservation of Monuments Act*, the only persons who need to be notified about an intention for a site to be declared a national monument are the owners and occupiers of the monument and adjacent land. A decision by the Government to compulsorily acquire private land for public purposes is only challengeable on the ground of bad faith, which is difficult to prove. Nonetheless, the fact that compensation payable for acquisitions is now pegged at the market rate, and the practice of granting additional *ex gratia* payments and covering removal and relocation expenses in appropriate cases, arguably relieves much of the hardship caused.

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<sup>140</sup> [2006] 1 S.L.R.(R.) 582 (H.C.).

<sup>141</sup> *Ibid.* at 602–603, para. 49.

<sup>142</sup> *Supra* note 7.

Interested persons who are not directly affected by such governmental decisions must therefore seek a remedy in administrative or constitutional law by initiating proceedings in the High Court for judicial review of the decisions. Here, they face several difficulties: the need to establish that they have standing to sue, and to prove that the relevant public authority has breached one or more administrative law rules. Fairly narrow interpretations of Articles 9(1), 12(1) and 14 of the *Constitution* by the courts thus far mean that the prospects of successfully demonstrating the unconstitutionality of the decisions in question are also slight. The same is true of legislation regulating the transient use of public space such as the *Public Entertainments and Meetings Act* and *Public Order Act*, and refusals by the authorities to issue licences and permits under these *Acts* for assemblies and processions to be held in outdoor venues. Thus it may be that the true utility of spatial justice is as a rallying point to encourage grassroots and community groups to effect change through the political process by calling for modifications to laws and policies.

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