

THE RIGHT TO EDUCATION: COMPARING EDUCATIONAL RIGHTS IN JAPAN, EL SALVADOR, AND THE UNITED STATES

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I. INTRODUCTION

Education is fundamental in the developmental stages of children and is generally referred to as “the key which allows people to move up in the world, seek better jobs, and ultimately succeed in their lives.”¹ The subject of education in the United States is one that is widely discussed, and calls for education reform have been made.² Not only is this the case in the United States, but also in countries around the world.³ This is such a high-priority topic in the international community that several international instruments guarantee the right to basic education. The right to education was included in the Universal Declaration of Human Rights, the Convention on the Rights of a Child, and the International Covenant on Economic, Social and Cultural Rights.⁴ This Comment will analyze the right to education as found in these three international instruments; the interpretation of the right to education by signatories of these treaties; and the steps that nations have taken in order to ratify the treaties.

In addition to analyzing the right to education as found in international instruments, this Comment will also focus on how these rights have been interpreted. Although the right to education has been universally recognized, education systems vary by country.⁵ Several nations have ratified the right to basic

1. V.A. Ponnemil, *Importance of Education*, NEWKERALA, <http://education.newkerala.com/india-education/Importance-of-Education.html> (last visited Apr. 10, 2014).

2. Sam Blumenfeld, *CFR Task Force Calls for Education Reform*, NEW AM. (July 27, 2012), <http://thenewamerican.com/reviews/opinion/item/12235-cfr-task-force-calls-for-education-reform>.

3. ERWIN R. TIONGSON, EDUC. POLICY REFORMS, ANALYZING THE DISTRIBUTIONAL IMPACT OF REFORMS 261 (2005), available at <http://siteresources.worldbank.org/INTPSIA/Resources/490023-1129845825946/education.pdf>.

4. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) art. 26 (Dec. 10, 1948) [hereinafter UDHR]; Convention on the Rights of Child, Nov. 20, 1989, 1577 U.N.T.S. 3, art. 28 [hereinafter CRC]; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, art. 13 (1967) [hereinafter ICESCR].

5. *National Implementation*, RIGHT TO EDUC. PROJECT, <http://www.right-to-education.org/page/national-implementation> (last visited Apr. 10, 2014) [hereinafter RIGHT TO EDUCATION PROJECT].

education either through their constitutions, legislation, or ratification of the treaties, but each has interpreted the right to basic education differently. These different interpretations have led to different education laws, policies, and practices.⁶

This Comment will focus on the right to education and its interpretation in three different countries: the United States, Japan, and El Salvador. These countries were chosen because of their particular interpretation of the right to an education, the varying expansiveness of that interpretation, the different laws and policies that have been implemented in order to secure the right to an education, the reputation of the education system in the country as compared to other countries, and its status within the international community.⁷ In analyzing these nations' interpretations of the right to education and their individual education reform efforts, it is clear that improvements must be made. These improvements must consider the economic and social statuses of different nations and need to be made on an international level in order to guarantee all children the right to education.

II. THE "RIGHT TO AN EDUCATION"

"[E]ducation is the process of instruction aimed at the all round development of individuals, providing the necessary tools and knowledge to understand and participate in day to day activities of today's world."⁸ The importance of education in the development of a child is widely recognized. As previously mentioned, the right to an education is recognized by several international instruments, including the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and the International Covenant on Economic, Social and Cultural Rights.⁹

6. *Id.*

7. *See infra* Part III.A–C.

8. Ponmelil, *supra* note 1.

9. UDHR, *supra* note 4, art. 26; CRC, *supra* note 4, art. 28; ICESCR, *supra* note 4, art. 13.

A. The Universal Declaration of Human Rights

The basic human right to an education was first recognized in the Universal Declaration of Human Rights (UDHR), adopted by the United Nations on December 10, 1948.¹⁰ After the Second World War ended, the international community wanted to ensure that conflicts did not happen again.¹¹ Thus, the U.N. General Assembly created the UDHR “to guarantee the rights of every individual everywhere.”¹² One of those rights, so important that the UN General Assembly included it in the UDHR, was the right to education. Article 26 of the UDHR states: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”¹³

The UDHR “is the basic international pronouncement of the inalienable and inviolable rights of all members of the human body” and “lists numerous rights—civil, political, economic, social and cultural—to which people everywhere are entitled.”¹⁴ The UDHR was not written as a binding instrument on the international community.¹⁵ The UDHR started as a statement of objectives that were to be considered by governments, but it has since become a part of customary international law.¹⁶ The international community has recognized the UDHR as “universally obligatory,” meaning that all states, and their

10. UDHR, *supra* note 4, art. 26.

11. *Universal Declaration of Human Rights: History*, UNITED NATIONS, <http://www.un.org/en/documents/udhr/history.shtml> (last visited Apr. 10, 2014).

12. *Id.*

13. UDHR, *supra* note 4, art. 26.

14. *Questions and Answers about the Universal Declaration of Human Rights*, UNITED NATIONS ASS'N CANADA, <http://www.unac.org/rights/question.html> (last visited Apr. 10, 2014) [hereinafter U.N. CANADA].

15. *Id.*

16. *What is the Universal Declaration of Human Rights?*, AUSTRALIAN HUMAN RIGHTS COMM'N, <http://www.humanrights.gov.au/publications/what-universal-declaration-human-rights> (last visited Apr. 10, 2014).

nationals, are bound to follow the instrument.¹⁷ Thus, the rights to life, liberty, and security of person; the right to participate fully in the cultural life; the freedom from torture; the freedom from inhumane treatment or punishment; and, more importantly for the purposes of this Comment, the right to an education are all universally recognized per the UDHR.¹⁸

B. International Covenant on Economic, Social and Cultural Rights

Like the UDHR, the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the U.N. General Assembly on December 16, 1966, has also recognized the basic right to an education.¹⁹ Although the UDHR was not a binding instrument and has since become binding only through customary international law, the ICESCR is a binding treaty to all national governments who have ratified or acceded to it.²⁰ As of 2012, 170 states have ratified or acceded to the ICESCR.²¹

The ICESCR is one of two treaties covering the rights found in the UDHR.²² Those national governments that have ratified or acceded to the ICESCR have promised to oblige the many principles and rights secured by the treaty. These rights include the right to an adequate standard of living, the right to work, the right to food and water, and the duty to provide and to protect the right to a basic education.²³

17. JORDAN J. PAUST, JON M. VAN DYKE & LINDA A. MALONE, *INTERNATIONAL LAW AND LITIGATION IN THE U.S.* 2 (3d ed. 2009).

18. U.N. CANADA, *supra* note 14; UDHR, *supra* note 4, arts. 3, 5, 26, 27.

19. ICESCR, *supra* note 4, art. 13.

20. *International Covenant on Economic, Social and Cultural Rights*, WORLD HEALTH ORG. 1, http://www.who.int/hhr/Economic_social_cultural.pdf; *Foundation of International Human Rights Law*, UNITED NATIONS, http://www.un.org/en/documents/udhr/hr_law.shtml (last visited Apr. 10, 2014).

21. *Id.*

22. *Id.* (noting that the International Covenant on Civil and Political Rights and the ICESCR covered almost all of the rights presented in the UDHR).

23. ICESCR, *supra* note 4, arts. 3, 6, 7 (specific rights discussed in Articles 6, 11, and 13 of the treaty). The United States did sign the ICESCR, but has not ratified the treaty. *Id.* at the Signatory Page; *see infra* Part III.A.

The duty to provide an education under the ICESCR is more particularized than the right found under the UDHR. Article 13 of the ICESCR states that parties to the:

[P]resent Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.²⁴

In order to realize this right to education, Article 13 of the ICESCR also requires that primary education be compulsory and free to all, that secondary education be generally available to all, and that higher education be “equally accessible to all.”²⁵

C. *The Convention on the Rights of a Child*

The basic right to education has also been recognized under the Convention on the Rights of a Child (CRC).²⁶ The CRC was adopted unanimously on November 29, 1989 by the U.N. General Assembly and “describe[s] the economic, social and cultural rights of the children.”²⁷ The primary reasons for adopting the CRC were to recognize that children “need special care and protection that adults do not . . . [and to] recognize[] that children have human rights” as well.²⁸

The CRC is a treaty binding on those who have ratified or acceded to it. As of 2005, with 192 countries having ratified

24. *Id.* art. 13.

25. *Id.*

26. CRC, *supra* note 4.

27. *Id.*; *Children's Rights History: Historical Overview of the Children's Rights Evolution*, HUMANIUM, <http://www.humanium.org/en/childrens-rights-history/> (last visited Apr. 10, 2014).

28. *Convention on the Rights of a Child: Introduction*, UNICEF, http://www.unicef.org/crc/index_30160.html (last updated Mar. 12, 2014).

the treaty, the CRC is the most ratified human rights treaty.²⁹ Only two countries have not ratified the treaty: Somalia and the United States.³⁰ By ratifying or acceding to the CRC, governments have promised to ensure and protect the rights of children, which can be separated into four different categories: survival rights, development rights, protection rights, and participation rights.³¹

Like the ICESCR, the CRC implements more definite duties on a nation state than the general duty proclaimed in the UDHR.³² In particular, Article 28 of the CRC states:

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.³³

29. *Convention on the Rights of a Child: Frequently Asked Questions*, UNICEF, http://www.unicef.org/crc/index_30229.html (last updated Nov. 30, 2005) [hereinafter *FAQ*].

30. *Id.* Somalia has not ratified the treaty because it currently has no recognized government, and the United States has signed the convention, but has yet to ratify the treaty. *Id.* (discussing the reasons that the United States has not ratified the CRC).

31. *Id.*; *Convention on the Rights of a Child: Rights under the Convention on the Rights of a Child*, UNICEF, http://www.unicef.org/crc/index_30177.html (last updated Nov. 29, 2005).

32. See *infra* Part II.A (discussing the right to education found in the UDHR).

33. CRC, *supra* note 4, art. 28.

In addition, Article 29 of the CRC also specifies different topics on which the education of children should focus.³⁴

D. Implementation of the Right to Education

Education is considered “so fundamental to human development and the process of social reproduction that its recognition as a basic human right is uncontroversial.”³⁵ Research shows that there is a strong relationship between education and earnings.³⁶ Not only do earnings of individuals rise in conjunction with the level of education reached, but there are also other personal benefits to receiving an education, including better health.³⁷ In addition, “society benefits from a more educated citizenry,” where “educated individuals commit fewer crimes and have higher voter participation.”³⁸ “[P]erhaps the most important societal benefit is the education of the next generation . . . to help attain the goal of technological progress.”³⁹ These benefits given to individuals and society from receiving an education may be one reason why three international instruments—the UDHR, the ICESCR, and the CRC—have recognized the right to an education. These three instruments have two fundamental principles in common: “First, there is the principle of universality—that education, or at least elementary (primary) education, must be available, free of

34. *Id.* art. 29 (“States Parties agree that the education of the child shall be directed to: (a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) The development of respect for the natural environment.”).

35. NEVILLE HARRIS, *EDUCATION, LAW AND DIVERSITY*, at vii (2007).

36. Richard L. Wobbekind, *On the Importance of Education*, 47 *BUS. ECON.* 90, 91 (2012).

37. *Id.*

38. *Id.*

39. *Id.*

charge to all . . . [and] [s]econdly, there should be equal access to education for everyone.”⁴⁰

Although the UDHR, the ICESCR, and the CRC all provide for a basic right to education, there are differences in the way the right is interpreted and what the treaty or instrument provides for. For example, under the UDHR, the right to education is a basic human right, but there is no definition of what this basic right entails.⁴¹ The right to an education is more definitive under the ICESCR, but the countries are given more leeway in the way the right is implemented.⁴² The rights provided for under the treaty are to be implemented by the countries that have ratified the treaty “to the maximum of available resources, with a view to achieving the full realization of the rights . . . by all appropriate means, including particularly the adoption of legislative measures.”⁴³ This means that in regard to the civil, political, economic, social, and cultural rights provided under the ICESCR, national governments that have ratified the treaty do not have a duty to provide some of these rights, such as feeding, clothing, housing, and educating its nationals, immediately.⁴⁴ Instead, these obligations can be provided as resources become available and as permitted by legislation.⁴⁵

Likewise, although the CRC makes certain rights unconditional, Article 4 of the CRC “calls for state parties to undertake all appropriate legislative, administrative and other measures of implementation . . . ‘to the maximum extent of their available resources.’”⁴⁶ This means that due to resources needed for the implementation of these provisions, a significant amount of time may pass before these provisions are fulfilled, which, under the CRC, is acceptable.⁴⁷

40. HARRIS, *supra* note 35, at 37.

41. UDHR, *supra* note 4.

42. ICESCR, *supra* note 4, art. 13.

43. *Id.*

44. DAVID WEISSBRODT & CONNIE DE LA VEGA, INTERNATIONAL HUMAN RIGHTS LAW: AN INTRODUCTION 25–26 (2007).

45. *Id.* at 27.

46. HARRIS, *supra* note 35, at 38.

47. *Id.*

Though the right to basic education is universally recognized per the UDHR, the ICESCR, and the CRC, the right is not defined in the UDHR; and the ICESCR and the CRC do not require the implementation of the provisions when the resources do not allow for it. Therefore, the way the right to an education is interpreted and secured varies based on the particular nation at issue.⁴⁸ For example, there are countries where the right is enforced through national legislation and found in some of the nations' constitutions, but for others, "it will be important to look to international law and standards."⁴⁹ Due to these different interpretations, varying education laws and practices have been put into place.

III. THE UNITED STATES, JAPAN, AND EL SALVADOR, AND THEIR RIGHT TO EDUCATION

While some countries have adopted education laws that give expansive rights to their nationals, other countries have been slow to follow and their education systems are subpar. This may have an international effect because countries that have education systems that provide more education rights have better standards of living, better economies, and are able to become powerhouses in the international arena by becoming world leaders in certain areas, like science and technology. Other countries may be seeking education reform initiatives in order to better their knowledge in these areas, which would also lead to a better economy and less societal issues, as well as a better economic status on an international level.

This section will focus on the three different countries: the United States, Japan, and El Salvador. The Comment will first introduce the educational system of the specific country and then focus on the national laws, including constitutional provisions, dealing with the right to education. With regards to the United States, the Comment will also analyze the education laws that are provided for under an individual state, Texas. With regards to Japan, a comparison between the education laws and system of Japan and the United States will be given.

48. RIGHT TO EDUCATION PROJECT, *supra* note 5.

49. *Id.*

With regards to El Salvador, a comparison between the education laws and system of El Salvador, the United States and Japan will be included.

A. The United States

The United States is a melting pot.⁵⁰ Many people have immigrated in pursuit of the “American Dream,” where they will have a better life and the opportunity to receive an education that would not be available in their country of origin.⁵¹ The United States has made education accessible to most of its population, unlike other countries in the world, which has contributed to the belief that it is a world leader in higher education.⁵² U.S. secondary schools have been accessible since the early 20th century.⁵³ In addition, there has been an expansion of state colleges and universities, which has led to students in the United States achieving higher levels of educational attainment as compared to other countries.⁵⁴

Even though many people come to the United States with the hopes of attaining a better education and the nation has allowed access to education to most of its population, education in the United States is far from perfect.⁵⁵ Recently, there have been calls for education reform in the United States as the educational attainment in the United States has slowed its increase.⁵⁶ This may be due to several reasons, one of them

50. Joyce Millet, *Understanding American Culture: From Melting Pot to Salad Bowl*, CULTURAL SAVVY, http://www.culturalsavvy.com/understanding_american_culture.htm (last visited Apr. 10, 2014).

51. David Francis, *Is the American Dream Dead?*, U.S. NEWS (Sept. 25, 2012), <http://money.usnews.com/money/personal-finance/articles/2012/09/25/is-the-american-dream-dead>.

52. Wobbekind, *supra* note 36, at 93.

53. *Id.*

54. *Id.*

55. See Samuel Weigley & Michael B. Sauter, *States with the Best and Worst School Systems*, 24/7 WALL ST. (Jan. 16, 2013), <http://247wallst.com/2013/01/16/states-with-the-best-and-worst-schools/> (noting that, although the U.S. school system is improving, according to an Education weekly survey, the United States earns a grade of “C.”).

56. Blumenfeld, *supra* note 2.

being that there are low levels of high school and college completion rates in the United States.⁵⁷

One of the significant factors in the low college completion rate is that students are not adequately prepared.⁵⁸ The lack of preparedness has slowed educational attainment in the country.⁵⁹ In the United States, not only are there lags in college completion rates, but students also lack preparedness in the science, technology, engineering, and mathematic fields.⁶⁰ A 2009 study showed that American students placed seventeenth out of thirty-four developed countries in science and twenty-fifth in mathematics.⁶¹ According to a survey conducted by the National Science Foundation, in looking at the fraction of college graduates who receive degrees in engineering, the United States ranks in the bottom fifteen out of ninety-three nations studied.⁶² Although educational attainment has slowed, due to technological advances, the demand for educated workers has increased.⁶³

A study by Georgetown University's Center on Education and the Workforce predicted that the shortage of educated American workers will be in excess of 3 million by 2018.⁶⁴ Education reform will be necessary to meet the shortage of educated workers, as additional studies have shown that "50 to 85 percent of the growth in America's GDP is attributable to advancements in science and engineering."⁶⁵ In the past, "each percent increase in GDP correspond[ed] to an increase of about 1 million jobs."⁶⁶ The United States will not be able to continue

57. Wobbekind, *supra* note 36, at 93.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. Norm Augustine, *America's Education Problem Isn't Money, It's How We Spend It*, U.S. NEWS (June 8, 2012), <http://www.usnews.com/opinion/articles/2012/06/08/americas-education-problem-isnt-money-its-how-we-spend-it>.

63. Wobbekind, *supra* note 36, at 93.

64. *Id.*

65. Augustine, *supra* note 62.

66. *Id.*

this rate of increase in jobs, unless there are educated workers to fill these positions.⁶⁷

Where education reform is concerned, U.S. laws should always be considered, as they determine the extent of education available to the country's population. In addition, an international perspective should be viewed as just as important because it ensures that the United States will become a competitive participant in the world economy. U.S. rankings within the world economy should be viewed with more scrutiny, especially when there are several fields in which the United States has lagged behind other developed countries.⁶⁸

There are also technological advances that require a more educated workforce, a sector in which the United States will see a shortage in coming years.⁶⁹ The United States' interpretation on the right to education will be reviewed in this Comment because, although the education system is held in high regard in some countries, the increase in educational attainment in the United States is slowing. In addition, the United States has lagged in providing education in certain fields as compared to other countries.

1. *The National Law*

The United States is a signatory for the ICESCR and the CRC, but has yet to ratify either of the treaties, meaning that it is not bound to the provisions set in place.⁷⁰ In addition, the United States has not explicitly guaranteed the right to an education in its Constitution or in any of its laws at the national level.⁷¹ Instead, individual states are responsible for their own

67. *Id.*

68. Wobbekind, *supra* note 36, at 93.

69. *Id.*

70. Jim Kelly, *Ratification of Treaty Would Subject U.S. Economic and Social Policies to Official UN Scrutiny*, GLOBAL GOVERNANCE WATCH (June 3, 2009), http://www.globalgovernancewatch.org/spotlight_on_sovereignty/ratification-of-treaty-would-subject-us-economic-and-social-policies-to-official-un-scrutiny.

71. HELENE SLESSAREV-JAMIR, THE STATUS OF THE "RIGHT TO EDUCATION" IN THE UNITED STATES 3 (2011), available at http://www.academia.edu/873422/The_Status_of_the_Right_to_Education_in_the_United_States; UNICEF, *Convention on the Rights of the Child: Frequently Asked Questions*, AMNESTY INT'L, <http://www.amnestyusa.org/our-work/issues/children-s-rights/convention-on-the-rights-of-the-child-0> (last visited Apr. 10,

education systems.⁷² The federal government has legislative enactments that states must follow in order to receive federal funding.⁷³ These enactments include the Elementary and Secondary Education Act, the No Child Left Behind Act, and the Individuals with Disabilities and Education Act.

In 1965, the first federal act that provided funding to the states for grades K–12 was the Elementary and Secondary Education Act (ESEA).⁷⁴ The “ESEA authorize[d] grants for elementary and secondary school programs for children of low-income families; school library resources, textbooks and other instructional materials; supplemental education centers and services; strengthening state education agencies; education research; and professional development for teachers.”⁷⁵

The Individuals with Disabilities and Education Act (IDEA) was originally enacted in 1975 and reauthorized in 2004.⁷⁶ The IDEA provides “federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education.”⁷⁷

The No Child Left Behind Act (NCLB) of 2001, which was signed into law in 2002, reauthorized the ESEA.⁷⁸ The NCLB’s purpose is to “raise achievement for all students . . . [which] is done through accountability, research-based instruction, [and] flexibility and options for parents.”⁷⁹

2014).

72. *10 Facts About K–12 Education Funding*, U.S. DEP’T OF EDUC. 1 (2012), <http://www2.ed.gov/about/overview/fed/10facts/10facts.pdf> [hereinafter *Facts*]; U.S. CONST. amend. X.

73. *Facts*, *supra* note 72, at 4 (“[The] conditions in federal law apply only when a state (or other grantee) voluntarily chooses to accept federal funds.”).

74. *Id.*

75. *Id.*

76. Nancy Lee Jones & Richard N. Apling, *The Individuals with Disabilities Education Act (IDEA): Overview of P.L. 108–446*, at 1 (2005), available at http://assets.opencrs.com/rpts/RS22138_20050505.pdf.

77. *Id.*

78. *Facts*, *supra* note 72.

79. *Id.*

2. *International Law*

As previously mentioned, the United States has not ratified either the Convention on the Rights of the Child (CRC) or the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁸⁰ It has been stated that the United States has not ratified the CRC because it is reluctant to subject its behavior to international scrutiny and because of allegations that the CRC will infringe on parental rights and violate the sanctity of the institution of the family.⁸¹ In addition, those who oppose ratification of the CRC claim that ratification will lead to the United Nations dictating how people raise and teach children.⁸²

Like the CRC, one of the arguments for not ratifying the ICESCR is the international scrutiny to which the United States will be subjected if it were ratified.⁸³ In addition, ratification would also restrict the domestic economic and social policies of the United States, and the rights granted in the ICESCR would also likely be justiciable in the U.S. courts under Article VI of the U.S. Constitution, which states that treaties are the supreme law of the land.⁸⁴

3. *State Law*

Because the states are responsible for education in their particular state, it is important to get an example of the education laws that have been passed in each state. This Comment will look into the education provisions found in the state of Texas, a state that has long been concerned with the education of its children.⁸⁵ It has been stated that one of the reasons Texas decided to sever its ties with the Mexican government was because of Mexico's failure "to establish any

80. Kelly, *supra* note 70; FAQ, *supra* note 29.

81. UNICEF, *supra* note 71.

82. *Id.*

83. Kelly, *supra* note 70.

84. *Id.*

85. *An Overview of the History of Public Education in Texas*, TEX. EDUC. AGENCY, <http://www.tea.state.tx.us/index4.aspx?id=148> (last modified Dec. 2, 2010) [hereinafter *Texas History*].

public system of education.”⁸⁶ Article 7 of the Texas Constitution gives the Texas Legislature the authority to “establish and make suitable provision[s] for the support and maintenance of an efficient system of public free schools.”⁸⁷

The 1845 Texas Constitution provided that one-tenth of the annual state tax would be set aside to support free public schools.⁸⁸ In addition to the state constitution providing a fund to support public education, a school law passed in 1845 set aside “as a permanent school fund \$2 million of the \$10 million in five-percent U.S. Indemnity bonds received in settlement of Texas’ boundary claims against the United States.”⁸⁹ In 1876, after the Civil War and Reconstruction, the new Texas Constitution “set aside 45 million acres of public domain for school support and directed that the income from the new Permanent School Fund be invested in bonds.”⁹⁰ Today, Texas’s Permanent School Fund provides \$765 million a year to local school districts.

There are over 1,039 independent school districts in Texas, which the Texas Education Agency (TEA) oversees.⁹¹ The TEA “is the administrative unit for primary and secondary public education.”⁹² Among others, the responsibilities of the TEA include “overseeing statewide curriculum; administering the statewide assessment program; administering a data collection system on public school students, staff, and finances; rating school districts under the statewide accountability system; operating research and information programs; [and] monitoring for compliance with federal guidelines.”⁹³

86. *Id.*

87. TEX. CONST. art. VII, § 1.

88. *Texas History*, *supra* note 85.

89. *Id.*

90. *Id.*

91. *Id.*; *see About TEA*, TEX. EDUC. AGENCY, <http://www.tea.state.tx.us/index2.aspx?id=3793> (last modified Aug. 14, 2013) [hereinafter *About TEA*] (listing the responsibilities of the TEA regarding primary and secondary education).

92. *About TEA*, *supra* note 91.

93. *Id.* The TEA is also responsible for managing the textbook process and serving as a fiscal agent for the distribution of state and federal funds. *Id.*

Not only does Texas have the TEA, the Texas Legislature has also established the Texas Education Code (TEC), which is a set of laws that govern public education in Texas.⁹⁴ The TEC has the following objectives:

Involve parents in their child's education; [c]hallenge students to meet their full educational potential; [p]revent dropouts; [e]nsure a well-balanced and appropriate curriculum; [p]repare students to be thoughtful, active citizens; [r]ecruit, develop, and retain qualified and highly effective personnel; [h]elp students demonstrate exemplary performance in comparison to national and international standards; [p]rovide safe and disciplined environments conducive to learning; [e]ncourage educators to keep current with instructional techniques; [i]mplement and use technology to increase the effectiveness of student learning.⁹⁵

Texas's effort in educating its children by allocating funds and land through the state's constitution, and by passing legislation, has had some success.⁹⁶ According to a TEA news release, for the Class of 2010, Texas has the tenth highest overall graduation rate among thirty-four states that reported to the National Governors Association Compact Graduation Rate.⁹⁷ Although Texas has seen higher graduation rates, Robert Scott, the former Texas Commissioner of Education, has stated that there is still "work to do to move the numbers even higher."⁹⁸ As

94. *Texas Education Code*, TEX. EDUC. AGENCY, <http://portals.tea.state.tx.us/page.aspx?id=920&bc=506> (last visited Apr. 10, 2014).

95. *Id.*

96. See *Texas Graduation Rate 10th Highest Among 34 States*, TEX. EDUC. AGENCY (Feb. 21, 2012), http://www.tea.state.tx.us/news_release.aspx?id=2147505559 (stating that Texas ranks among the top of states in both overall graduation rate and graduation rate by ethnicity); see also *An Overview of the History of Public Education in Texas*, TEX. EDUC. AGENCY, <http://www.tea.state.tx.us/index4.aspx?id=148> (last modified Dec. 2, 2010) (discussing the permanent school fund and land grant set aside by the legislature in the mid-1800s).

97. *Texas Graduation Rate 10th Highest Among 34 States*, TEX. EDUC. AGENCY (Feb. 21, 2012), http://www.tea.state.tx.us/news_release.aspx?id=2147505559.

98. *Id.*; EDUC. WEEK, SAFETY, DISCIPLINE, AND SCHOOL CLIMATE: NEW FINDINGS FROM QUALITY COUNTS 2013: CODE OF CONDUCT (Jan. 13, 2013) [hereinafter NEW FINDINGS], available at http://www.edweek.org/media/QualityCounts2013_Release.pdf

of 2013, Texas is one state among the ten bottom spenders for education in the United States,⁹⁹ and based on several different factors, its education system received a grade of “C+” from *Education Week*.¹⁰⁰ In the United States, there is a call for education reform on a national perspective. Because the individual states have been given the responsibility of providing education to their population, there is also a need for education reform on the state level.

B. Japan

Japan is one of the world’s largest economies, and is a more developed country than other countries in Asia.¹⁰¹ In addition to being a leader in the world economy, Japan’s education system is also superior to comparable developed countries.¹⁰² “International test comparisons show that Japanese students’ mean achievement is much higher than students in the United States for all age groups and for all areas, and that their academic achievement ranks among the top nations in almost every category.”¹⁰³ The quality of education in Japan is generally considered superior to other countries, and many Japanese students do not see a reason to study abroad.¹⁰⁴ This higher quality of education may be due to the education rights and laws that have been implemented in Japan.

(listing Texas among the ten bottom spenders in 2012).

99. NEW FINDINGS, *supra* note 98.

100. *State Report Cards*, EDUC. WEEK, http://www.edweek.org/ew/qc/2013/state_report_cards.html?intc=EW-QC13-EWH (last visited Apr. 10, 2014) (grading based on six areas of educational policy and performance: (1) Chance for Success; (2) K–12 Achievement; (3) Standards, Assessments, & Accountability; (4) The Teaching Profession; (5) School Finance; and (6) Transitions & Alignment).

101. KEITH RABIN, UNDERSTANDING JAPAN AND IMPLICATIONS FOR THE UNITED STATES: INTERVIEW WITH DR. HUGH PATRICK, DIRECTOR OF CENTER ON JAPANESE ECONOMY AND BUSINESS, COLUMBIA BUSINESS SCHOOL 3 (2012), *available at* http://jetro2.nr10.com/images/stories/JETRO_Focus_Feb2012.pdf.

102. HARRY WRAY, JAPANESE AND AMERICAN EDUCATION: ATTITUDES AND PRACTICES 1 (1999).

103. *Id.*

104. *See* RABIN, *supra* note 101, at 5 (noting that there are less Japanese students studying in the United States, which could be due to the idea that “Japan is such a clean, safe and enjoyable place to live that there are few incentives to go abroad” unless the student wants a foreign experience).

It has been said that “[r]easons for this enhanced performance include the strong social bias towards education and diligence, generous provision of free textbooks, and the importance of schooling in determining vocation” in Japan.¹⁰⁵ Although the education in Japan is considered superior, it is criticized for being highly competitive, administering difficult exams, and maintaining a national curriculum that “stifles creativity and overlooks the uglier incidents in Japan’s recent past.”¹⁰⁶

1. *The National Law*

Unlike the United States, Japan has secured the right to an education through its Constitution and has enacted legislation that sets out principles to providing education and more specific educational provisions.¹⁰⁷ This legislation includes, among others, the Fundamental Law on Education and the School Education Law.¹⁰⁸

Article 26 of the Constitution of Japan states: “(1) All people shall have the right to receive an equal education correspondent to their ability, as provided by law. (2) All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. (3) Such compulsory education shall be free.”¹⁰⁹ In addition to the right to education provision in the Constitution of Japan, Japan also enacted the Fundamental Law of Education in 1947, which sets out the fundamental principles of public education.¹¹⁰ The Fundamental Law of Education was enacted in accordance with the Constitution of Japan, and its eleven articles were set out

105. *Japan: Education*, ECONOMIST INTELLIGENCE UNIT, Mar. 10, 2005, available at ProQuest 336752374.

106. *See id.* (discussing criticism of Japan’s rote system because of testing pressure and what is referred to as “examination hell”).

107. *See* Kensho Takeshi, *Legal Basis of Education in Japan: Basic Conceptual Laws for Education in Japan*, <http://www.u-gakugei.ac.jp/~takeshik/regaba.html> (last visited Apr. 10, 2014).

108. *Id.*

109. U.S. GOV’T PRINTING OFFICE, DEP’T OF STATE, PUB. NO. 2836, FAR E. SERIES 22, THE CONSTITUTION OF JAPAN: EFFECTIVE MAY 3, 1947 (1947).

110. Takeshi, *supra* note 107.

“with a view to clarifying the aim of education and establishing the foundation of education in Japan.”¹¹¹

In 1947, Japan also enacted the School Education Law, which provides specific educational provisions relating to the school system, educational administration and financial support.¹¹² The School Education Law set out the six-three-three system.¹¹³ This framework declares that there will be six years in elementary school; three years in lower secondary school, which would be the U.S. version of junior high school; and three years in upper secondary school, which would be the equivalent to high school.¹¹⁴ The School Education Law also requires compulsory schooling for nine years, the six years in elementary school and the three years in lower secondary school.¹¹⁵

2. *International Law*

Unlike the United States, Japan has chosen to ratify the human rights treaties that guarantee the basic right to education. On September 21, 1979, Japan ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), which, as mentioned before, recognizes that everyone has a right to an education.¹¹⁶ Almost fifteen years later, Japan also ratified the Convention on the Rights of the Child (CRC) on May 22, 1994, which, like the ICESCR, also recognizes the basic right of every child to receive an education, and requires that

111. *Id.* (discussing the aim of education in Article 1, the educational principle in Article 2, equal opportunity in education in Article 3, compulsory education in Article 4, co-education between men and women in Article 5, school guidelines in Article 6, education carried out in the home and other places of society in Article 7, political education without activism in Article 8, educational secularism in Article 9, school administrative duties in Article 10, and the authority to enact additional laws in Article 11).

112. MINISTRY OF EDUC., CULTURE, SPORTS, SCI. & TECH., *THE DEVELOPMENT OF EDUCATION IN JAPAN (2004)*, available at <http://www.ibe.unesco.org/International/ICE47/English/Natreps/reports/japan.pdf>.

113. *Education in Japan*, <http://www.education-in-japan.info/sub1.html> (last visited Apr. 10, 2014).

114. *Id.*

115. *Id.*

116. ICESCR, *supra* note 4. The right to education is found in Article 13.

the countries acceding to the treaty provide a free and compulsory primary education.¹¹⁷

When deciding whether to ratify the CRC, the Japanese government looked at its laws to determine whether any of them would need to be modified.¹¹⁸ There were assertions that the ratification of the CRC would not “require any amendments to Japanese legislation nor any new enactments,” and that the Ministry of Education of Japan instructed education institutions to “ensure that schools make the spirit and the principles of the Convention fully known.”¹¹⁹

Although the Japanese government stated that its laws would not need to be changed to meet the CRC requirements, in 1998, reports of nongovernmental organizations (NGOs) disagreed and recommended twenty-two items that needed to be changed in order to meet the guidelines set by the CRC.¹²⁰ One of those changes dealt with educational equality, which is a right provided for in the CRC, the Japanese Constitution, and the Fundamental Law on Education.¹²¹ In 1998, with the foreign population being 1.2% of the total population, graduates from ethnic schools were generally not allowed into any public high school, national university or college.¹²² In addition, as of 1995, many foreigners still needed Japanese-language education in order to attend the public schools.¹²³ Individuals from the *buraku* class, who are part of a discriminatory caste system that

117. *Status of Ratification of the Principal International Human Rights Treaties*, OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS (June 16, 2006), available at <http://www2.ohchr.org/english/bodies/docs/RatificationStatus.pdf> (showing when Japan ratified the CRC); see also CRC, *supra* note 4.

118. Yukiko Matsushima, *Controversies and Dilemmas: Japan Confronts the Convention*, in CHILDREN’S RIGHTS: A COMPARATIVE PERSPECTIVE 126 (Michael Freeman ed., 1996).

119. Comm. on the Rights of the Child, *Initial Reports of States Parties due in 1996 Addendum: Japan*, U.N. Doc. CRC/C/41/Add.1 (Aug. 5, 1996).

120. Akiyoshi Kawaguchi, *The Rights of the Child and Education in Japan in the Light of the United Nations Convention*, 30 PROSPECTS 497, 498 (2000).

121. See *id.* (discussing how Japanese law prohibited discrimination in education, but in reality, inequality did exist).

122. *Id.* at 498–99.

123. See *id.* (stating that in 1995, 11,542 recent foreigners needed Japanese-language education).

originated 400 years ago, also face discrimination and prejudice in Japan.¹²⁴ This discrimination also takes place in the education arena, with the education level of children from the *buraku* class being much lower.¹²⁵ Lastly, children with disabilities and women are also disadvantaged, even though this sort of discrimination has been considered unjustified and illegal under educational law and in court cases.¹²⁶

Under the Convention on the Rights of the Child, the right to education “not only secures equal education opportunity, but also implies the freedom to learn.”¹²⁷ In addition to being able to educate students in the home or to take part in private schooling, Japan has construed this right to include freedom of textbook authors to write what they would like and the professional freedom of educators, whom are restricted by educational principles.¹²⁸ It has been recognized though that the “principles of Japanese public education, and the liberty required to support it, are not fully implemented due to strong political pressures.”¹²⁹

In addition to eliminating educational inequality, one of the recommendations given by NGOs to ensure compliance with the CRC was to provide for more counselors.¹³⁰ As mentioned before, the educational system in Japan is very competitive and the excessive stress caused by the educational environment is cited as a reason for children not wanting to attend school.¹³¹ The counselors, who would consult and facilitate the return of these

124. *Id.*

125. *Id.* The educational level of children from the *buraku* class is lower than the national average, where in 2000, when this article was published, high school entrance rates were at 80% and college entrance rates are at 24.7%. *Id.*

126. *Id.* (noting that there is no explicit provision prohibiting education discrimination due to handicap in Japan’s Constitution or the Fundamental Education Law).

127. Kawaguchi, *supra* note 120, at 500.

128. *See id.* (discussing how Japan has construed the right to education, and noting that, although authors and educators have this freedom, they are not allowed to take part in arbitrary actions).

129. *Id.*

130. *Id.* at 503.

131. *Id.* at 502–03.

children to schools, could solve the problem of educational enrollment and reenrollment of certain students.¹³²

Along with providing more counselors, NGOs also recommended that more education initiatives may need to be considered in order to offer a varied approach that will provide children an environment that will meet their needs and meet the guidelines of the CRC.¹³³ One of these initiatives may be to provide children with rights of pastime and recreation through Japan's laws.¹³⁴ Unlike the United States, whose education system is lagging to meet the needs of the economy, Japan has tried to ensure that their students will meet the needs of its economy.¹³⁵ The competitive nature of the education system, which could also be considered a major downfall, stemmed from the educational policy that promised high earnings to those with impressive competitive nature.¹³⁶ Not only did this competitive nature add more stress, but adults started to limit the pastimes and recreational activities of their children to ensure that their children would attend prestigious schools that would give them higher earnings.¹³⁷ By adding counselors and allowing rights of pastime and recreational activities through its laws, Japan may be able to meet the guidelines of the CRC in a more structured and student-friendly manner.

3. *Japan v. America*

Although the educational attainment in Japan is higher than the educational attainment in the United States, the United States may still be considered stronger in certain

132. See Kawaguchi, *supra* note 120, at 503 (stating that the counselors could not “necessarily” solve the problem).

133. See *id.* at 502–03 (discussing the need for reform to offer an alternative to the current competitive education system).

134. *Id.* at 503.

135. See Norm Augustine, *America's Education Problem Isn't Money, It's How We Spend It*, U.S. NEWS (June 8, 2012), http://www.usnews.com/opinion/articles/2012/06/08/americas-education-problem-isnt-money-its-how-we-spend-it_print.html (discussing how growth in science-related jobs has outpaced college graduates with science degrees); Akiyoshi Kawaguchi, *The Rights of the Child and Education in Japan in the Light of the United Nations Convention*, 30 PROSPECTS 497, 498 (2000).

136. Kawaguchi, *supra* note 120, at 502–03.

137. *Id.* at 503.

areas.¹³⁸ The United States has a more decentralized educational system that “allows [U.S.] schools to be creative and teachers and local administrators to be more flexible, innovative, and responsive to local needs.”¹³⁹ America’s educational system “allows local school boards much greater leeway to raise taxes, determine educational budgets, hire and fire teachers, build schools, adopt textbooks, and establish educational policy for their school districts.”¹⁴⁰

The centralized system found in Japan means that its teachers and students receive less autonomy. The Ministry of Education in Japan has an “enormous influence in establishing educational standards by demanding elaborate school surveys, reports, and excessive criteria for school buildings, class sizes, salaries, and curriculum.”¹⁴¹ The Ministry of Education also, with assistance, writes the Course of Studies and curriculum, and if teachers do not adhere to them, they may be dismissed.¹⁴²

Textbook selection is also governed by the Ministry of Education through its licensing system, which “limits the number of textbooks for each subject and grade level and maintains a degree of censorship that rejects a pluralistic society and unacceptable interpretations of poems, literature, and social and historical problems,” which is different from the selection of textbooks in the United States.¹⁴³ In the United States, the selection of textbooks is left to the market and administrators, as well as teachers.¹⁴⁴ These strict standards in Japan have led to complaints by certain groups that some textbooks neglect the poor treatment of minority groups, deep-seated social problems, environmental issues, and occupation reform, while other groups

138. See WRAY, *supra* note 102, at 1 (“International test comparisons show that Japanese students’ mean achievement is much higher than students in the United States for all age groups . . .”).

139. *Id.* at 81.

140. *Id.*

141. *Id.* at 77.

142. WRAY, *supra* note 102, at 77.

143. See *id.* at 77–80 (noting that in America “[t]extbook selection is left to market vagaries and the good sense of administrators and teachers”).

144. *Id.* at 80.

have complained that some textbooks exaggerate the dark side of Japanese history.¹⁴⁵

Although there were attempts to decentralize education in Japan by taking away power from the government in making education decisions and transferring it over to local educational officials, when these officials were empowered, they did not know what to do.¹⁴⁶ These education officials were reluctant to challenge the Ministry of Education's leadership, and efforts to decentralize were unsuccessful.¹⁴⁷ Japan's centralized education system is unlike the U.S. system, in which administrators and teachers in school districts have some authority in implementing educational standards, and it will likely not be borrowed by the United States because its adoption would severely limit the democratic process.¹⁴⁸

C. *El Salvador*

El Salvador is a developing country.¹⁴⁹ According to the International Statistics Institution, a developing country is defined as a country with a Gross National Income per capita of \$11,905 or less per year.¹⁵⁰ It is the smallest country in Central America, but it is the most densely populated.¹⁵¹ El Salvador's history has been marked by violence and poverty due to a civil war that enveloped the country between the years 1980 and 1992, which claimed the lives of an estimated 75,000.¹⁵²

145. *Id.* at 80–81.

146. *Id.* at 76.

147. WRAY, *supra* note 102, at 76.

148. *Id.* at 78; *see also* LAWRENCE A. UZZELL, CATO INST., NO CHILD LEFT BEHIND: THE DANGERS OF CENTRALIZED EDUCATION POLICY, 2–5 (2005) (arguing that the passage of the No Child Left Behind Act was an act of centralization that could lead to unconstitutional outcomes if used “as a tool to muscle through fundamental reforms against the will of entrenched special interests”).

149. *ISI Developing Countries (in 2013)*, THE INT'L STATISTICS INST. (Jan. 1, 2013), <http://www.isi-web.org/component/content/article/5-root/root/577-developing2012>.

150. *Id.*

151. Charlie O'Malley, *El Salvador*, in FROMMER'S CENTRAL AMERICA 220, 220 (Kathleen Warnock et al. eds., 2011).

152. *El Salvador*, COMPASSION INT'L, <http://www.compassion.com/about/where/elsalvador.htm> (last visited Apr. 10, 2014) [hereinafter COMPASSION].

Although the civil war has ended, El Salvador still faces violence and poverty.¹⁵³

These poverty levels have had an effect on the education provided to the country's citizens. Instead of attending schools, Salvadoran children, as young as six years old, work to help support their families.¹⁵⁴ Only 28.5% of fifteen- to nineteen-year-olds in El Salvador report reaching the ninth grade, and, among the poor, 56% of those reporting reach the sixth grade, while 26% reach the ninth grade.¹⁵⁵ Reports have shown that poorer students in El Salvador have a higher dropout rate than the wealthier Salvadoran population.¹⁵⁶ Although the number of Salvadoran students who report reaching the ninth grade is currently lower than other countries, El Salvador has seen higher enrollment rates in recent years.¹⁵⁷ In 2004, El Salvador had 250,000 more children in primary school and 50,000 more children in secondary school than it did in 1992.¹⁵⁸

El Salvador is a country that has faced turmoil, and the education system has suffered, but the country has worked to get the education rates up. Although El Salvador has raised education enrollment rates since 1992, it must continue to work on raising education rates in order to catch up to other countries, like its neighbors, which have devoted more of their resources to education.¹⁵⁹ In order to continue its successes in

153. See Paula LeRoy, *Violence and Poverty Entangled in El Salvador*, PEACE & CONFLICT MONITOR (Apr. 16, 2012), http://www.monitor.upeace.org/innerpg.cfm?id_article=896 (noting that "violence in El Salvador is both a product and cause of rising poverty").

154. COMPASSION, *supra* note 152.

155. Education and El Salvador's Strategy 12 (Jan. 26, 2004) (unpublished manuscript), available at <http://www.hks.harvard.edu/fs/rhausma/elsvdr/education.pdf>.

156. *Id.*

157. See *id.* at 5 (showing, in Table 2, increased enrollment rates across all age groups from 1992 to 2002).

158. *Id.* at 4.

159. *Id.* at 10 ("[W]ith the exception of Guatemala, all other Central American countries and Mexico devote a greater share of the Gross Domestic Product to the education sector." Where El Salvador has devoted 3.2% of its GDP to education, Mexico has devoted 4.9%, Honduras has devoted 3.6%, Nicaragua has devoted 3.9%, Costa Rica has devoted 6.4%, Panama has devoted 5.1%, and Guatemala has devoted 1.7%).

reforming its education system and rise to the level of other countries, El Salvador needs to look into its education laws and the international treaties that secure the right to basic education, which El Salvador has ratified.¹⁶⁰

Because of its past, its recent successes, and the issues facing the country in its plans to reform its education system, this Comment has chosen to analyze El Salvador's participation in international treaties, its interpretation of the basic right to education, and its education laws.

1. *The National Law*

Like Japan, and unlike the United States, El Salvador protects the right to education in its Constitution.¹⁶¹ Article 56 of the Constitution of El Salvador, enacted in 1983, guarantees the right to education by stating: "All inhabitants of the Republic have the right and the duty to receive a simple and basic education that will train them to perform as useful citizens. The State shall promote the formation of special education centers. When imparted by the State, simple, basic and special education shall be free."¹⁶² Not only has the Salvadoran Constitution guaranteed the right to education, but it has also guaranteed several other rights in regard to children. This includes the "right of every child to live in familial and environmental conditions that permit his or her full development."¹⁶³ Article 55 of the Salvadoran Constitution also "allows parents a preferential right to choose education of their children."¹⁶⁴ In addition, Article 55 states that education has the following purposes: ensure development of the personality in its spiritual dimension, moral and social; contribute to building a democratic society that is more prosperous, just and humane;

160. El Salvador has ratified both the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights. OFFICE OF THE U.N. HIGH COMM'R FOR HUMAN RIGHTS, *supra* note 117.

161. CONSTITUCIÓN Dec. 20, 1983, art. 56 (El Sal.).

162. *Id.*

163. *Id.* art. 34; *El Salvador: National Laws*, CHILD RIGHTS INT'L NETWORK, <http://www.crin.org/resources/infodetail.asp?ID=25654> (last visited Apr. 10, 2014) [hereinafter *National Laws*].

164. CONSTITUCIÓN, *supra* note 161, art. 55; *National Laws*, *supra* note 163.

inculcate respect for human rights and the enforcement of the corresponding duties; combat any spirit of intolerance and hatred; inculcate the national reality and identify themselves with the value of the Salvadoran nationality; and foster the unity of the people of Central America.¹⁶⁵

There are many other provisions found in the Salvadoran Constitution that are specific to children. Article 33 requires the state to regulate the relationship between parents and children.¹⁶⁶ Article 36 provides for the equal rights of children born in or out of wedlock and adopted children, and creates the duty of a parent to give their children protection, assistance, education and security.¹⁶⁷ Finally, Article 42 entitles employed women to paid rest before and after child birth and to the conservation of her employment and requires the State to regulate the obligation of employers to install and maintain crib rooms for children of workers.¹⁶⁸ With these additional rights and guarantees, El Salvador has been very explicit on the rights of the child, more so than other developed countries, like the United States, which does not mention children explicitly in its Constitution.

In providing the right to education to all children, El Salvador has passed several laws.¹⁶⁹ In 1990, El Salvador passed the General Education Act, which governs first through ninth grade, as well as education for adult and special education.¹⁷⁰ Title I of the General Education Act states the objectives of the law, the purposes of national education, the general objective of the national education, and policies for

165. CONSTITUCIÓN, *supra* note 161, art. 55.

166. *National Laws*, *supra* note 163.

167. *Id.*

168. *Id.*

169. Ley General de Educación, D.O. N° 917/1996 (1996) (El Sal.) [hereinafter General Education Act] (setting forth policies to regulate primary and secondary education); Ley de Educación Superior D.O. N° 468/2004 (2004) (regulating higher education); Ley de la Carrera Docente D.O. N° 665/1996 (1996) (El Sal.) (regulating educators and the teaching profession).

170. See *National Laws and Policies on Minimum Ages—El Salvador*, RIGHT TO EDUC. PROJECT, <http://www.right-to-education.org/country-node/334/country-minimum> (last visited Apr. 10, 2014) (summarizing El Salvador's reports to the United Nations regarding the Convention on the Rights of the Child).

access to education.¹⁷¹ Article 5 of the General Education Act states that preschool and primary education shall be free when the state provides it.¹⁷² Article 20 of the General Education Act states that primary education will consist of nine years (from first grade to ninth grade) starting when the child is seven years old, and that it shall be free and obligatory when the state provides it.¹⁷³

Article 21 of the General Education Act gives the objective of primary education in El Salvador.¹⁷⁴ Some of these objectives are: (1) to contribute to the harmonious development of the personality of their habitats such as the family, school, community, both nationally and internationally; (2) to develop a work discipline, order, responsibility, tenacity, and self-esteem, like habits for physical excellence and health maintenance; (3) to improve the skills for the proper use of different forms of expression and understanding; and (4) to promote social and personal growth, creating favorable conditions for continuing education.¹⁷⁵ In addition to providing the objectives for primary education, the General Education Act also provides the objectives for the education of adults and special education.¹⁷⁶

With El Salvador's extensive General Education Act, the country is trying to fulfill the rights that have been stated in its Constitution. In addition, this Act may also lead to the fulfillment of the rights provided by the different international documents that provide for the right to education.

171. General Education Act, *supra* note 169, art. 1.

172. *Id.* art. 5.

173. *Id.* art. 20.

174. *Id.* art. 21.

175. *Id.* art. 21 (including the following additional objectives: developing skills that promote efficient development in daily life domain in the scientific, humanistic, technological as well as the related art; enhancing the capacity to see, hold, imagine, create, analyze, reason and decide; improving the skills for proper use of different forms of expression and understanding; contributing to the apprehension, practice and respect for ethical values, moral and civic, that empowers them to live successfully in society; helping to develop self-learning to function successfully in processes change and lifelong learning; and promoting respect for the human, natural and cultural heritage and the performance of their duties and rights).

176. General Education Act, *supra* note 169, arts. 29, 35.

2. *International Law*

Like Japan and several countries around the world, El Salvador has ratified the human rights treaties that guarantee the right to education. El Salvador signed the Convention on the Rights of the Child (CRC) on January 26, 1990 and subsequently ratified the CRC on July 10, 1990.¹⁷⁷ Almost eleven years earlier, El Salvador ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on November 30, 1979. This was almost twelve years after El Salvador signed the ICESCR.¹⁷⁸ Article 144 of the Salvadoran Constitution provides “that formalized treaties, properly ratified, constitute laws of the Republic once they enter into effect. Where there is a conflict between the law and the treaty, the treaty shall prevail.”¹⁷⁹ Thus, because the El Salvador has ratified both the ICESCR and the CRC, they are also the law of the land and when there is a conflict, the treaty will be deemed supreme.

Although El Salvador has implemented laws that meet the standards and criteria of the ICESCR and the CRC,¹⁸⁰ there are still reform efforts to be made in El Salvador. As mentioned previously in this Comment, the CRC and the ICESCR both condition providing the right to education “to the maximum of available resources, with a view to achieving the full realization of the rights . . . by all appropriate means, including particularly the adoption of legislative measures.”¹⁸¹ Although El Salvador has taken measures in adopting legislation and constitutional provisions guaranteeing the right to education, there are certain aspects in the country’s history, such as the Salvadoran Civil War, that have prevented the full implementation of free, basic, and compulsory education.¹⁸²

177. CRC, *supra* note 4, at Signatory Page.

178. ICESCR, *supra* note 4, at Signatory Page.

179. *National Laws, supra* note 163; CONSTITUCIÓN, *supra* note 161, art. 144.

180. *National Laws, supra* note 163; CONSTITUCIÓN, *supra* note 161, art. 144.

181. ICESCR, *supra* note 4, art. 2.

182. In 1993, three years after El Salvador’s ratification of the CRC, the Committee on the Rights of the Child stated in its observations that it recognized that El Salvador’s “persistent poverty and 12 years of internal conflict and violence” were factors that impeded the implementation of the Convention. U.N. Committee on the Rights of

In its State Party Report to the Committee on the Rights of the Child, which is “the body [of] independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties,”¹⁸³ El Salvador has recognized the measures taken by the country in order to secure children’s rights in general, and in particular, their right to education.¹⁸⁴ In addition, El Salvador interprets certain articles in its General Education Act and Constitutional provisions as a means to satisfy international treaty obligations.¹⁸⁵

In ensuring that its international treaty obligations are met, El Salvador has also set up programs to increase the accessibility of education.¹⁸⁶ One such program, which will be discussed further, is the Community Participation in Education Programme (EDUCO). EDUCO “promotes parent participation through local meetings and exchanges of experience at which community self-management projects are developed” and enhances the family’s ability to promote development.¹⁸⁷ Two other programs that El Salvador has implemented are the Alternative Classrooms Programme and the Accelerated Education Programme.¹⁸⁸ The Alternative Classroom Programme was initiated in response to low enrollment ratios, overage students, and absenteeism. It also allows teachers to attend to students in “two or more grades of basic education jointly, simultaneously and yet separately.”¹⁸⁹ The Accelerated Education Programme seeks to afford children who are over the regular ages allowed in schools and other adolescents the opportunity to enhance their prospects and living conditions by

the Child, *Concluding Observations of the Committee on the Rights of the Child: El Salvador*, ¶ 6, U.N. Doc. CRC/C/15/Add.9 (Oct. 18, 1993).

183. See *Comm. on the Rights of the Child*, OFFICE OF THE U.S. HIGH COMM’R FOR HUMAN RIGHTS, <http://www2.ohchr.org/english/bodies/crc/> (last visited Apr. 10, 2014).

184. UN Committee on the Rights of the Child, State Party Report: El Salvador, ¶ 416, U.N. Doc. CRC/C/65/Add.25 (Oct. 22, 2003).

185. *Id.* ¶ 418.

186. *Id.* ¶ 422.

187. *Id.* ¶ 427.

188. *Id.* ¶ 423.

189. UN Committee on the Rights of the Child, State Party Report: El Salvador, ¶ 429, U.N. Doc. CRC/C/65/Add.25 (Oct. 22, 2003).

giving them educational opportunities that would otherwise be unavailable.¹⁹⁰

In complying with the obligations of the CRC and the ICESCR, as well as the UDHR, as it is considered customary international law, El Salvador has taken several steps to guarantee the right to education. Although El Salvador has been moving in the right direction to meet the obligations found both in its Constitution and the international treaties, education reform in the country is still a serious issue, as there are still improvements to be made to make quality education accessible to all children.

3. *El Salvador v. Japan and United States*

El Salvador is focusing on a decentralized approach in its education system, giving the state less control. This approach is very different from Japan's centralized approach, and has been analyzed in greater detail than the United States, where education reform initiatives have also placed some focus on decentralization.¹⁹¹ This approach was taken into consideration due to the Salvadoran Civil War. When El Salvador first started focusing on education reform, reform was key in "solv[ing] problems of access, equity, efficiency and quality that were exacerbated during the civil war period, from 1980 to 1992."¹⁹² During that time, while education demands increased, the war drained the economic resources, which left little to be invested in social services.¹⁹³ In order for children to receive the education warranted in the nation's Constitution, the CRC, and the ICESCR, "a serious transformation of the education system was needed, but, facing serious economic constraints," it became a serious challenge for the country.¹⁹⁴ As the government had less of its national budget to spend on education toward the end of the civil war, the Ministry of Education initiated a process

190. *Id.* ¶ 435.

191. *Id.* ¶ 465.

192. Helga Cuéllar-Marchelli, *Decentralization and Privatization of Education in El Salvador: Assessing the Experience*, 23 INT'L J. OF EDUC. DEV. 145, 148 (2001).

193. *Id.*

194. *Id.* at 149.

to transform the education system by focusing on the decentralization and privatization of the education system.¹⁹⁵

In moving towards a decentralized and privatized education system, El Salvador's Ministry of Education goals include: "improving education quality and access, strengthening civic education, and increasing equity, efficiency and effectiveness within the system."¹⁹⁶ One of the programs, as mentioned above, in achieving more accessibility to education around the country while decreasing state expenditures and duties, is the EDUCO program created in 1991.¹⁹⁷

EDUCO is a public program that encourages the creation of schools in rural areas that are not strictly public while also encouraging community participation in the administrations of education and improving education quality.¹⁹⁸ Through EDUCO, the provision of education services is transferred from being administered and financed by the state to Community Education Associations, which are nonprofit private associations of social services.¹⁹⁹ The Community Education Associations receive funds from the state in order to provide free education services, hire teachers, and purchase materials, but they are not paid for administering these services.²⁰⁰

The EDUCO program has been successful in expanding educational supplies to rural schools and increasing the enrollment of students in EDUCO schools.²⁰¹ Between the years 1991 and 1998, enrollment in EDUCO schools increased from 8,416 students to 206,336 students in grades K–9.²⁰² It must be emphasized that EDUCO is a program focused in rural areas, and although enrollment in EDUCO schools has increased,

195. *Id.* at 149–50. The General Education Act of El Salvador provides that education shall be free and compulsory in preschool and primary grades when the state provides it. General Education Act, *supra* note 169, art. 20.

196. Cuéllar-Marchelli, *supra* note 192, at 152.

197. *Id.* at 151.

198. *Id.* at 155.

199. *Id.*

200. *Id.* at 155–56.

201. Cuéllar-Marchelli, *supra* note 192, at 155–56.

202. *Id.* at 157.

enrollment in the traditional public schools remained low.²⁰³ In addition, EDUCO alone has not been able to fully solve the problem of access to education within the poorest families.²⁰⁴ There is still a grave amount of students in rural populations who do not attend school, because of work, the lack of economic resources, and lack of interest in education.²⁰⁵

Education in El Salvador does not generally require students to pay any additional fees when the state provides it.²⁰⁶ The Ministry of Education has insisted on the elimination of tuition fees and school uniforms in order to improve equity in access, and according to the Ministry of Education, EDUCO schools are not supposed to impose school fees or school uniforms.²⁰⁷ However, Community Education Associations are allowed to determine school fees if community members agree.²⁰⁸ It has been estimated that around 29% of parents of third grade children who are enrolled in an EDUCO program do pay tuition, 60% have to spend for school uniforms, and a portion of these parents also have to buy school supplies and textbooks.²⁰⁹ Although more parents from traditional rural public schools pay for all of the same costs, expenditures in EDUCO schools are higher.²¹⁰ This leads to the conclusion that school access for some students may still depend on the economic resources available to their parents in order to cover the costs of education.²¹¹

In addition to covering private expenses, parents of children in EDUCO schools also have to dedicate a lot of time to the program. "It has been estimated that [in total, the] parents' contribution in EDUCO schools is equivalent to the full-time work of 805 people, which represents 28% of the work done by all [Ministry of Education] administrative and support staff

203. *Id.*

204. *Id.* at 157–58.

205. *Id.* at 157.

206. General Education Act, *supra* note 169, art. 20.

207. Cuéllar-Marchelli, *supra* note 192, at 159.

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

assisting all public schools.”²¹² Although the greater contribution of parents in EDUCO schools allows for more education resources, such as money, time, labor, and skills, it can also be considered an economic burden to communities who have EDUCO programs, as these parents would generally use this time in contributing to the economy.²¹³ With these issues in mind, other programs may need to be considered in order to guarantee the right to a free education in El Salvador.

In reforming its education system, El Salvador has taken drastic measures to secure access to education in certain areas, such as rural and poor areas, by decentralization. Although Japan has a centralized education system, with the system being highly regulated by the state, calls for decentralization in certain areas have been made.²¹⁴ These decentralization initiatives in Japan do not rise to the level of El Salvador’s initiatives. Whereas some decentralization efforts in Japan’s education system are focused on alleviating the strictness of the education system by giving school administrators more authority, there is no information leading to the conclusion that it is intended to increase the access of education. On the other hand, one of the main goals of decentralizing the education system in El Salvador is to increase enrollment in schools and access in rural areas, as well as to decrease the burden on the nation’s government to provide funds to achieve this goal.²¹⁵

Decentralization is one feature of the American education school system,²¹⁶ and with legislation such as the No Child Left Behind Act, the main focus of the education system arguably is to improve the quality of education children receive.²¹⁷ Compared to education reform initiatives in the United States, a distinguishing feature is that El Salvador is focusing on expanding access to educational services.

212. Cuéllar-Marchelli, *supra* note 192, at 159.

213. *Id.* at 159–60.

214. WRAY, *supra* note 102, at 81–82.

215. Cuéllar-Marchelli, *supra* note 192, at 147–48.

216. WRAY, *supra* note 102, at 81.

217. GreatSchools Staff, *What the No Child Left Behind Law Means for Your Child*, <http://www.greatschools.org/improvement/quality-teaching/61-no-child-left-behind.gs?page=all> (last visited Apr. 10, 2014).

IV. CONCLUSION

Education is considered such an important right that the international community has decided to embody it within three of its international instruments: the Universal Declaration of Human Rights, the Convention on the Rights of a Child, and the International Covenant on Economic, Social and Cultural Rights.²¹⁸ Although the right to education has been guaranteed in these instruments, it has not been defined.²¹⁹ This lack of definition has led to different interpretations of what the right to education entails. Education reform policies implemented in nations that have ratified the treaties or have recognized the UDHR as a universally binding instrument in order to assure that the constitutional and treaty obligations have been met demonstrate these differences.

With the differences in interpretation of the right to education in mind, a possible solution to achieve unanimity in the interpretation of the right to education on an international level may be to define the right to education within the treaties. This solution may not be ideal, as countries may decide not to ratify new provisions or make reservations to the certain provisions. In addition, countries like the United States, which have not ratified either the ICESCR or the CRC, will not be subject to the defining terms unless the terms become a part of customary international law. A widespread adoption of a uniform definition of the right to education would have binding implication on countries like the United States who have not ratified the treaties, once it becomes a part of customary international law.²²⁰

218. UDHR, *supra* note 4, art. 26; ICESCR, *supra* note 4, art. 13; CRC, *supra* note 4, art. 28.

219. See, e.g., CRC, *supra* note 4, art. 28 (recognizing the right of the child to education, while using only broadly descriptive words such as “primary” and “secondary” to flesh out what constitutes education).

220. See William S. Dodge, *Withdrawing from Customary International Law: Some Lessons from History*, 120 YALE L.J. ONLINE 169 (2010), available at <http://www.thepocketpart.org/images/pdfs/920.pdf> (“General and consistent practice can generate a rule of customary international law . . . that is binding on all nations even if that practice is not universal.”).

The United States, Japan, and El Salvador are three countries with different economic, social, and educational policies. These policies could explain why the countries have different educational statuses within the international community. It has been recognized that even though education laws and policies in each country have been enacted and implemented, education reform efforts have been made in all three countries in order to provide students with the education that is guaranteed through the international instruments.²²¹ Although this is the case, these efforts are focused on different areas: decentralization and deregulation; quality; and access. These differences not only turn on the social and economic statuses of the nation, but also the education laws that have been implemented in compliance with international instruments.

In order for the efforts of these three countries to produce change in their respective education systems, additional initiatives need to be taken. Reform in the United States is focused on educational quality, and in order to achieve this goal, one solution could be to ratify treaties, like the ICESCR and the CRC, that have guaranteed children the right to education. Although the right to education remains undefined in these treaties, by guaranteeing the right to education through ratification of treaties, the United States may be required to re-examine its federal laws and adjust them in order to meet treaty standards. Once the federal laws have been reviewed and amended to meet the treaty “right to education” guidelines, individual state laws may also be re-examined and amended in order to meet the new standards set forth in federal laws. Instead of education being dependent on state laws, these changes could lead to better quality education throughout the United States, as it would be federally mandated.

When it concerns the quality of education and the access to education for its student, Japan has had great success.²²²

221. It should be noted that the United States has ratified neither the ICESCR nor the CRC, but the UDHR is universally binding, as it is customary international law. U.N. CANADA, *supra* note 14.

222. WRAY, *supra* note 102, at 1.

Although this is the case, the Japanese education system remains centralized, and the strict standards have taken a toll on its students, which is a reason why decentralization and deregulation of the education system is a primary concern.²²³ In order to achieve the goals of decentralization and deregulation, Japan may want to make amendments to its laws that will allow for more administrative freedom. With this newfound freedom, educators could be more creative with the curriculum, course of studies, and textbook selection.²²⁴ This would also allow students to be in a less strict environment, which would lower stress levels.

El Salvador has had a turbulent and violent past, and its education reform efforts have been focused on increasing the access of education to children all around the nation.²²⁵ El Salvador has tried to increase this access by decentralizing the education system through programs like EDUCO, in order to alleviate the costs that are associated with providing education, but burdens remain.²²⁶ For example, because these programs are not completely provided for by the government, there are still fees associated with them, and families have to put in a lot of time into making these programs successful.²²⁷ These expectations may not be feasible when considering a family's economic status and the amount of time they need to work in order to provide for their family. A solution to the issues that have not been solved through implementation of programs like EDUCO would be to expend more on education and cut down in other areas, which will likely not be an easy task. Once access to education has been increased, the next issue El Salvador will have to tackle is the quality of education Salvadoran students

223. *Id.* at 82 (“The comprehensive curriculum in 90 percent of the nation’s high schools is directed at the 39% who will go on to two year or four year colleges.” Additionally, “approximately 75% of secondary school students are still attending schools where even elective courses are basically similar for all. Bright students are only challenged by the competitive nature and teaching methodology of the very best private or cram schools.”).

224. *Id.* at 81–82.

225. Cuéllar-Marchelli, *supra* note 192, at 148.

226. *Id.* at 157–58.

227. *Id.* at 159.

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receive—an issue with which developed countries have struggled.²²⁸

Recognizing the right to education through international instruments has led to new laws and policies in nations throughout the world. This is progress, considering the alternative, where no education laws or policies would be implemented. Although this may be the case, as this Comment recognizes, changes and reforms in nations are needed. By having a uniform definition of the right to education and what this right entails, these differences may be circumvented and at a minimum, children from all over the world will have access to quality education that meets their individual needs.

228. Blumenfeld, *supra* note 2.