

NONCOMPLIANT EFFECTIVENESS OF HUMAN RIGHTS TREATIES: EVIDENCE FROM EAST ASIAN COUNTRIES IN PROTECTING PERSONS WITH DISABILITIES' RIGHT TO EDUCATION

Mercy Renci Xie^{*}

ABSTRACT

Scholars have long debated whether international human rights treaties matter. Generally, quantitative studies are more skeptical about their efficacy, while qualitative research often affirms their positive impact. To reconcile these seemingly contradictory perspectives, this Article proposes the concept of noncompliant effectiveness, where human rights treaties are effectively implemented without State compliance. This Article presents a triad case study focusing on the implementation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in China, Japan, and South Korea. The CRPD is a relatively recent international human rights treaty that has rarely been discussed in the debate on the effectiveness of human rights treaties. China, Japan, and South Korea, with their Confucian cultures and education systems, are often criticized for endorsing ableism and elitism, making them particularly challenging cases for improving the rights of persons with disabilities. By specifically examining the

^{*} S.J.D., Syracuse University College of Law, 2026; LL.M., Syracuse University College of Law, 2020; LL.B. Southwest University of Political Science and Law, China, 2018. This Article was selected for the 2023 Cornell Law School Inter-University Graduate Conference and JSD Symposium: The Next Generation of Scholarship hosted by Washington University in St. Louis. I would like to give special thanks to my advisor Professor Arlene S. Kanter for her deep engagement and thoughtful advice. For constructive commentary and fruitful engagement with this research, I would like to thank Professor Audie Klotz, Professor Beth Ferri, Dr. Fengming Cui, Kai Wang, Yaron Covo, Angel Gabriel Cabrera Silva, Xin Ma, Jun Young Lee, and Jun Zhang. I sincerely thank Willow Hilliard, Anjali Thakor, Michael J. Weaver, and Skylar Gleason for their excellent editing work. Unless otherwise indicated, all translations and errors are my own.

implementation of the right to inclusive education, as mandated by Article 24 of the CRPD, this Article demonstrates that noncompliant but effective practices can improve the educational situations of persons with disabilities. However, it cautions that while noncompliant effectiveness may be preferable to noncompliant ineffectiveness, deviating from the fundamental requirements of a convention may only lead to superficial and temporary improvements. Without systematic changes aligning with the core demands of a human rights treaty, progress may remain limited and largely symbolic.

TABLE OF CONTENTS

ABSTRACT	1062
TABLE OF CONTENTS.....	1064
INTRODUCTION.....	1065
I. CRPD: THE FIRST HUMAN RIGHTS TREATIES TO SPECIFICALLY PROTECT PERSONS WITH DISABILITIES	1072
A. The CRPD Social Model of Disability: Emancipation of Persons with Disabilities	1073
B. The Right to Inclusive Education: Ensuring Equity and Access for All.....	1076
II. HUMAN RIGHTS TREATIES DO NOT WORK: EVIDENCE AND ITS LIMITATIONS.....	1081
III. ELITISM AND ABLEISM: MAJOR BARRIERS TO INCLUSIVE EDUCATION IN EAST ASIA	1089
IV. NONCOMPLIANCE WITH THE CRPD	1095
A. Noncompliant Definitions of Disabilities, Reasonable Accommodations, and Discrimination	1095
1. China	1096
2. Japan.....	1099
3. Korea	1105
B. Inclusive Education as a Symbol in Laws.....	1109
1. China	1109
2. Japan.....	1114
3. Korea	1116
V. EFFECTIVENESS OF THE CRPD	1119
A. Noncompliant Effectiveness in China	1119
B. Japan	1124
C. Korea	1127
CONCLUSION.....	1130

INTRODUCTION

Scholars have long debated the question of whether human rights treaties matter.¹ Many quantitative works are skeptical about human rights treaties, noting the increased number of reported human rights violations in countries after treaty ratification.² Critics argue that human rights treaties generally are ineffective because States Parties often fail to comply.³ Conversely, qualitative research suggests that human rights treaties do improve human conditions.⁴

1. See generally Oona A. Hathaway, *Do Human Rights Treaties Make Enough of a Difference?*, 111 YALE L. J. 1935 (2002) [hereinafter Hathaway, *Do Treaties Make a Difference*] (arguing that ratification of human rights treaties does not make human rights protection better and sometimes makes it worse); Ryan Goodman & Derek Jinks, *Measuring the Effects of Human Rights Treaties*, 14 EUR. J. INT'L. L. 171 (2003) (critiquing Hathaway's methodologies on testing the effectiveness of human rights); Emilie M. Hafner-Burton & Kiyoteru Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110 AM. J. SOCIO. 1373 (2005) [hereinafter Hafner-Burton & Tsutsui, *Empty Promises*] (arguing governments frequently endorse human rights agreements for superficial reputational reasons, creating a stark disconnect between policy and actual practices, which can sometimes worsen human rights violations); Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 J. CONFLICT RESOL. 925 (2005) (arguing the impact of human rights treaties largely depends on the level of democracy and the strength of civil society); Emilie M. Hafner-Burton, Kiyoteru Tsutsui, & John W. Meyer, *International Human Rights Law and the Politics of Legitimation: Repressive States and Human Rights Treaties*, 23 INT'L. SOCIO. 115 (2008) [hereinafter Hafner-Burton et al., *Politics of Legitimation*] (suggesting that repressive states, especially autonomous ones, often ratify human rights treaties as symbolic gestures without genuine intentions to comply, leading to a disparity between their commitments and actual practices).

2. Hathaway, *Do Treaties Make a Difference*, *supra* note 1, at 1940.

3. Arlene S. Kanter, *Do Human Rights Treaties Matter? The Case for the United Nations Convention on the Rights of People with Disabilities*, 52 VAND. J. TRANSNAT'L L. 577, 580–83 (2019) [hereinafter Kanter, *Do Treaties Matter*] (summarizing the limitations of Hathaway's method). For a detailed discussion of the misperception of human rights treaty ineffectiveness, see *infra* Part II.

4. See generally, e.g., Angel Gabriel Cabrera Silva, *The Right to Consult Ourselves: Conceptualizing the Proactive Function of the Right to Free, Prior, and Informed Consent*, 36 HARV. HUM. RTS. J. 147 (2023) (arguing that Indigenous people in Mexico have actively used the United Nations Declaration on the Rights of Indigenous Peoples to persuade local government to protect the community); SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO SOCIAL JUSTICE (2006) (arguing the Convention on the Elimination of All Forms of Discrimination against Women in fact improved women's human rights in India, China, Fiji, Hong Kong, Hawai'i, and Massachusetts). For a collection of works exploring human rights treaties' effectiveness in improving the human rights situation in Northern Africa, Sub-

To resolve these seemingly contradictory conclusions, this Article contends that human rights can be effectively implemented without State compliance because compliance and effectiveness are two distinct concepts⁵—a condition this Article refers to as “noncompliant effectiveness.” Conflating these two concepts may result in a failure to truly recognize the impact of human rights treaties.⁶

Given that each human rights treaty has a different purpose and varying levels of acceptance by different countries,⁷ this Article explores the nuances of the noncompliant effectiveness argument by focusing specifically on the United Nations Convention on the Rights

Saharan Africa, Southeast Asia, Latin America, and Eastern Europe, see THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE (Thomas Risse, Stephen V. Ropp & Kathryn Sikkink eds., 1999).

5. Many articles fail to define compliance explicitly or use the terms “effectiveness” and “compliance” interchangeably. See, e.g., Daniel W. Hill, *Estimating the Effects of Human Rights Treaties on State*, 72 J. POL. 1161, 1165–66 (2010) (failing to define compliance or effectiveness); Wade M. Cole, *Human Rights as Myth and Ceremony? Reevaluating the Effectiveness of Human Rights Treaties, 1981-2007*, 117 AM. J. SOCIO. 1131, 1134–37 (2012) (failing to define compliance or effectiveness); Daniel W. Hill, Jr. & K. Anne Watson, *Democracy and Compliance with Human Rights Treaties: The Conditional Effectiveness of the Convention for the Elimination of All Forms of Discrimination Against Women*, 63 INT’L. STUD. Q. 127, 127–29 (2019) [hereinafter Hill & Watson, *Democracy and Compliance*] (treating compliance as synonymous with effectiveness).

6. Kal Raustiala, *Compliance & Effectiveness in International Regulatory Cooperation*, 32 CASE W. RES. J. INT’L. L. 387, 387–88 (2000) [hereinafter Raustiala, *Compliance & Effectiveness*]; Kal Raustiala & Anne-Marie Slaughter, *International Law, International Relations and Compliance*, in SAGE HANDBOOK OF INTERNATIONAL RELATIONS 709, 711–12 (Walter Carlsnaes, Thomas Risse, & Beth A Simmons eds., 2002) [hereinafter Raustiala & Slaughter, *International Compliance*]. In fact, besides the noncompliant effectiveness of human rights treaty implementation, there are three other types: noncompliant ineffectiveness, compliant ineffectiveness, and compliant effectiveness. This Article focuses on the most counterintuitive one: noncompliant effectiveness. For a detailed discussion of the other three types of implementations, see the Conclusion.

7. Some treaties are ratified by almost every country, but others are not so popular. For example, only the United States has not ratified the Convention on Rights of the Child (CRC). See *Ratification Status for CRC - Convention on the Rights of the Child*, OFF. OF THE U.N. HIGH COMM’R FOR HUM. RTS., https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en [<https://perma.cc/M3R4-WCQJ>] (indicating that all States have ratified the CRC other than the United States). By contrast, only 78 of 193 U.N. Member States have ratified the Convention for the Protection of All Persons from Enforced Disappearance. *Committee on Enforced Disappearances*, OFF. OF THE U.N. HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/en/treaty-bodies/ced> [<https://perma.cc/8YD7-DS6X>].

of Persons with Disabilities (CRPD).⁸ The CRPD is a relatively new international human rights treaty and has been rarely discussed in the debate on the impact of such treaties.⁹ However, persons with disabilities represent 16% of the world's population and have faced discrimination for decades in most, if not all, countries in the world.¹⁰ Accordingly, understanding the experiences of persons with disabilities is critical to a fulsome understanding of the effectiveness of human rights treaties.

To support the argument that noncompliant but effective implementation of human rights treaties commonly exists and should be taken seriously, this Article explores the implementation of Article 24 of the CRPD: the right to inclusive education.¹¹ I chose Article 24 based on the recognition that education is fundamental to empower persons with disabilities to exercise other rights by enhancing knowledge and economic opportunities.¹² I conducted a triad case study on China, Japan, and South Korea (hereinafter Korea). All three Asian countries ratified the CRPD without any Reservations, Understandings, or Declarations (RUDs) to Article 24 that would limit its full effect.¹³ These countries were selected because they

8. Convention on the Rights of Persons with Disabilities, *adopted* Dec. 13, 2006, 2515 U.N.T.S. 3 (entered into force May 3, 2008) [hereinafter CRPD].

9. To say that few studies discuss the CRPD with respect to debates over the effectiveness of human rights treaties does not mean that no scholars have focused on the CRPD's significance in changing the situation for persons with disabilities in various countries. Legal scholar Arlene Kanter has made two notable contributions to this debate. *See generally* Kanter, *Do Treaties Matter*, *supra* note 3 (arguing that the CRPD is making a difference in the lived experiences of individuals around the world by shifting social views of disabilities, driving the development of domestic laws, impacting international legal norms, and providing a model for other positive developments); Arlene S. Kanter, *The Role of Human Rights Indicators in Assessing Compliance with the UN Convention on the Rights of People with Disabilities*, 58 GA. L. REV. 663 (2024) (discussing the significance of human rights indicators for the CRPD in improving accountability).

10. *Disability: Key Facts*, WORLD HEALTH ORG. (Mar. 7, 2023) [hereinafter *WHO Disability Facts*], <https://www.who.int/news-room/fact-sheets/detail/disability-and-health> [<https://perma.cc/Y9QW-4GVC>].

11. CRPD art. 24, *supra* note 8.

12. However, to fully understand the right to inclusive education, Articles 1 (Purpose), 2 (Definitions), and 5 (Equality and Non-Discrimination) are indispensable. CRPD arts. 1–2, 5, *supra* note 8. For a detailed discussion on inclusive education under the CRPD, see *infra* Section I.B.

13. RUDs are statements made by countries during ratification to limit, clarify, or interpret their obligations under human rights treaties. Vienna Convention on the Law of Treaties art. 2, ¶ 1(d), May 23, 1969, 1155 U.N.T.S. 331,

represent the cases where compliance or effectiveness of Article 24 of the CRPD is “least likely” to be observed. Due to the influence of Confucian ideals of the “perfect person” that have existed for more than a thousand years,¹⁴ these three Asian societies have long viewed persons with disabilities as inferior and have contemplated disability as a purely individual deficiency.¹⁵ However, Articles 1 and 3 of the CRPD reject this deficiency model of disability and require States Parties to recognize disability as a social construction and persons with disabilities as part of human diversity and humanity.¹⁶ The CRPD’s social and human rights model of disability, which originated from the Disability Rights Movements,¹⁷ may face difficulties in countries without similar movements to challenge inferior views of disability.¹⁸ In addition, China, Japan, and Korea have a long history of only using standardized exams to determine eligibility for higher education and government employment.¹⁹ This practice has been

333. China ratified the CRPD on August 1, 2008; Japan ratified it on January 20, 2014; and Korea ratified it on December 11, 2008. *Convention on the Rights of Persons with Disabilities*, U.N. TREATY COLLECTION [hereinafter *CRPD Ratification Status*], https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en [<https://perma.cc/7X6Q-B925>].

14. The “perfect person” is translated from “*jūnzǐ*” which is the ideal image of a person in Confucianism. Being *jūnzǐ*, a person must have a normal and healthy body. Yuexin Zhang & Sandra Rosen, *Confucian Philosophy and Contemporary Chinese Societal Attitudes Toward People with Disabilities and Inclusive Education*, 50 EDUC. PHIL. & THEORY 1113, 1116 (2018).

15. *Id.* For further discussion about attitudes toward disability in East Asian cultures, see *infra* Part III.

16. CRPD arts. 1, 3, *supra* note 8.

17. See Guy Dewsbury et al., *The Anti-Social Model of Disability*, 19 DISABILITY & SOC’Y 145, 146 (2004) (explaining how the social model of disability frames disability as a social justice agenda); Tom Shakespeare & Nick Watson, *Beyond Models: Understanding the Complexity of Disabled People’s Lives*, in NEW DIRECTIONS IN THE SOCIOLOGY OF CHRONIC AND DISABLING CONDITIONS 57, 63–64 (Graham Scambler & Sasha Scambler eds., 2010) [hereinafter Shakespeare & Watson, *Beyond Models*] (discussing the relationship between the disability rights movement and the social model of disability).

18. One reason is the ableism and elitism embedded in traditional Asian culture, which impact every aspect of society. For a detailed discussion, see *infra* notes 124–126 and accompanying text.

19. Students who succeeded in such processes are called “elite,” meaning the purpose of the education system is to select elites. See generally LIHONG HUANG, ELITISM AND EQUALITY IN CHINESE HIGHER EDUCATION: STUDIES OF STUDENT SOCIO-ECONOMIC BACKGROUND, INVESTMENT IN EDUCATION, AND CAREER ASPIRATIONS (2005) (arguing that socio-economic elitism and educational inequality in China have persisted despite reform efforts by the socialist regime);

criticized for focusing exclusively on test-taking abilities, neglecting various individual learning capacities and socioeconomic backgrounds.²⁰ As a result, Chinese, Japanese, and Korean education systems stigmatize students with disabilities and implicitly endorse ableism and elitism within their societies.²¹ These countries have historically segregated students with disabilities into special education schools, a practice that continues today.²² However, inclusive education under Article 24 of the CRPD requires that, to the greatest extent possible, students with disabilities learn together with non-disabled peers in the same classroom with reasonable accommodations, as needed.²³

Complying with Article 24 of the CRPD is very difficult in schooling systems centered around standardized testing. Indeed, neither China, Japan, nor Korea comply with Article 24, as noted in the critiques and suggestions from the Committee on the Rights of Persons with Disabilities (CRPD Committee).²⁴ However, as

Xuelan Rong & Tiantian Shi, *Inequality in Chinese Education*, 10 J. CONTEMP. CHINA 107 (2001) (discussing how the income gap between business elites and peasants in rural places causes educational inequality).

20. See generally Yiyi Lai, *The Double Effects of Standardized Testing on Students and Environment*, 8 J. EDUC. HUMANS. & SOC. SCIS. 1615 (2023) (arguing that serious negative effects caused by the standardized tests include test anxiety, teaching to the test, and achievement gaps); Bernie Froese-Germain, *Standardized Testing + High-Stakes Decisions = Educational Inequity*, 32 INTERCHANGE 111 (2001) (arguing that standardized tests perpetuate and intensify educational inequity through test bias and the misuse of test scores).

21. For more discussions concerning Confucianism and elitism and ableism in China, see Meng Deng & Kim Fong Poon-McBrayer, *Reforms and Challenges in the Era of Inclusive Education: The Case of China*, 39 BRIT. J. SPECIAL EDUC. 117 (2012) [hereinafter Deng & Poon-McBrayer, *Inclusive Education*]; Qiaoxian Xu & Tian Wu, *The UN Convention on the Rights of Persons with Disabilities and China's Protection of the Right to Education of the Persons with Disabilities*, 17 J. HUM. RTS. 545 (2018); Xiao Qu, *Confucianism and Human Rights - Exploring the Philosophical Base for Inclusive Education or Children with Disabilities in China*, 39 DISABILITY & SOC'Y 1443 (2022).

22. See *infra* Section IV.B (discussing the failure to practice inclusive education in China, Japan, and Korea despite the use of language evoking inclusive practices).

23. CRPD art. 24, *supra* note 8; Comm. on the Rts. of Persons with Disabilities, General Comment No. 4 (2016) on the Right to Inclusive Education, ¶ 11, U.N. DOC. CRPD/C/GC/4 (Aug. 26, 2016) [hereinafter CRPD, General Comment No. 4].

24. See Comm. on the Rts. of Persons with Disabilities, General Comment No. 6 (2018) on Equality and Non-Discrimination, ¶¶ 63–65 U.N. Doc. CRPD/C/GC/6 (Mar. 9, 2018) [hereinafter CRPD, General Comment No. 6] (“The failure of some States parties to provide students with disabilities . . . with equal

discussed in Part V of this Article, despite apparent noncompliance, the current education situation for students with disabilities in these countries has improved significantly compared to pre-ratification conditions. Therefore, the evidence of noncompliant but effective implementation of the CRPD in China, Japan, and Korea may bolster the argument that such implementation is possible in other countries with more disability-friendly cultures and education systems.²⁵ As one of the most recent international human rights treaties, the CRPD provides valuable insights that expand our understanding of the full potential and impact of human rights treaties.

This Article consists of five parts. Part I introduces the CRPD. It first discusses different models of disability, including the CRPD's social model of disability under Article 1. This Part

access to mainstream school with inclusive and quality education is discriminatory, contrary to the objectives of the Convention and in direct contravention of articles 5 and 24.”); Comm. on the Rts. of Persons with Disabilities, *Concluding Observations on the Combined Second and Third Periodic Reports of the Republic of Korea*, ¶ 49, U.N. Doc. CRPD/C/KOR/CO/2-3 (Oct. 6, 2022) [hereinafter CRPD, *Concluding Observations on the Combined Second and Third Periodic Reports of Korea*] (expressing concern that “the State party maintains special education on the basis of a medical impairment-based approach and regularly increases the number of special schools, which results in a high number of children with disabilities, including autistic children and children with intellectual, psychosocial or multiple disabilities, receiving segregated special education”); Comm. on the Rts. of Persons with Disabilities, *Concluding Observations on the Initial Report of Japan*, ¶ 52, U.N. Doc. CRPD/C/JPN/CO/1 (Oct. 7, 2022) [hereinafter CRPD, *Concluding Observations on the Initial Report of Japan*] (“The Committee is concerned about: (a) The perpetuation of segregated special education of children with disabilities, through medical-based assessments, making education in regular environments inaccessible for children with disabilities[.]”); Comm. on the Rts. of Persons with Disabilities, *Concluding Observations on the Initial Report of China*, ¶ 35, U.N. Doc. CRPD/C/CHN/CO/1 (Nov. 14, 2012) [hereinafter CRPD, *Concluding Observations on the Initial Report of China*] (“The Committee is concerned about the high number of special schools and the State party’s policy of actively developing these schools.”).

25. Except for cultures that reflect public support, States Parties generally need political will and capacity to comply with human rights treaties. However, public support does not always translate into political will, especially in countries without effective democratic systems. Therefore, it is possible that, despite their disability-friendly cultures, States Parties may fail to comply with the CRPD due to factors such as a lack of political will or insufficient resources. Conversely, even when the culture on the ground is not hospitable to human rights, strong political will, sufficient resources, and an effective implementation system can make compliance possible. See BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* 378–79 (2009) (discussing the relationship among cultural resistance, recourse, and political will).

specifically explains why the CRPD's social model of disability is indispensable to achieving inclusive education under Article 24 of the CRPD.

Part II reviews existing literature critiquing human rights treaties' effectiveness and discusses limitations of the evidence it presents. Although such empirical evidence is important, it argues that focusing solely on numerical data and the statistical significance of certain results may overlook more subtle and nonlinear changes or improvements in real-world scenarios.

Part III explores why ableism and elitism are deeply rooted in Asian cultures and how these ideologies make implementing inclusive education difficult.

Part IV of the Article illustrates how Chinese, Japanese, and Korean disability-related laws perceive disability as a purely individualistic deficiency by examining definitions of disability, reasonable accommodations, and discrimination based on disabilities. In addition, it explores education for persons with disabilities in each country and how these countries' laws and policies render inclusive education more symbolic than genuine. Consequently, this section concludes that China, Japan, and Korea fail to comply with Articles 1 and 24 of the CRPD, which emphasize a social model understanding of disability and inclusive education, respectively.

The penultimate section, Part V, examines the effectiveness of Article 24 in improving educational opportunities and equality for persons with disabilities in China, Japan, and Korea. Despite these countries' failure to comply with Article 24, it argues that students with disabilities have a greater opportunity to enroll in mainstream settings, to receive reasonable accommodations, and to obtain individual support in China, Japan, and Korea because of their countries' ratification of the CRPD.

This Article concludes with a brief discussion of three other possible forms of human rights treaties implementation: noncompliant ineffectiveness, compliant ineffectiveness, and compliant effectiveness. Although noncompliant effectiveness of human rights treaties can occur, effectiveness achieved without adherence to a treaty's core obligations tends to be superficial and temporary. Without systematic changes that align with the essential demands of a human rights treaty, even if the treaty brings some improvements to the lives of the target population, its impact will remain limited, such that it may become merely symbolic.

I. CRPD: THE FIRST HUMAN RIGHTS TREATIES TO SPECIFICALLY PROTECT PERSONS WITH DISABILITIES

Persons with disabilities have been discriminated against throughout history, in almost every country in the world.²⁶ The CRPD is the first binding international law to specifically protect the rights of people with disabilities, promising equality and non-discrimination in all areas of life and relying on a human rights approach to disability.²⁷ As a landmark human rights treaty, the CRPD was the product of five years of meetings at the United Nations.²⁸ The CRPD signifies that all people with disabilities, regardless of their labels or diagnoses, are entitled to treatment on an equal basis with all other persons.²⁹ The CRPD has been ratified by 192 countries as of January 2025,³⁰ and is considered a major achievement for disabled people throughout the world.³¹ As a human rights treaty, the CRPD reflects

26. ARLENE S. KANTER, *THE DEVELOPMENT OF DISABILITY RIGHTS UNDER INTERNATIONAL LAW: FROM CHARITY TO HUMAN RIGHTS* 7 (2014) [hereinafter KANTER, *INTERNATIONAL DISABILITY RIGHTS*]. For a collection of scholarly works discussing the history of disability in different times, cultures, and areas, see *THE ROUTLEDGE HISTORY OF DISABILITY* (Roy Hanes, Ivan Brown & Nancy E. Hansen eds., 2018); see also generally Yuanyuan Qu, *Understanding the Body and Disability in Chinese Contexts*, 35 *DISABILITY & SOC'Y* 738 (2020) (discussing the disability and treatment for persons with disabilities in mainland China).

27. Rosemary Kayess & Phillip French, *Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities*, 8 *HUM. RTS. L. REV.* 1, 2 (2008) [hereinafter Kayess & French, *Introducing the CRPD*]; Theresia Degener, *10 Years of Convention on the Rights of Persons with Disabilities*, 35 *NETH. Q. HUM. RTS.* 152, 152 (2017) [hereinafter Degener, *10 Years of the CRPD*]. For a more comprehensive look at the substantive articles of the CRPD, see KANTER, *INTERNATIONAL DISABILITY RIGHTS*, *supra* note 26.

28. Arlene S. Kanter et al., *The Right to Inclusive Education Under International Law: Following Italy's Lead*, 17 *J. INT'L SPECIAL NEEDS EDUC.* 21, 23 (2014) [Kanter et al., *Inclusive Education Under International Law*]; Kayess & French, *Introducing the CRPD*, *supra* note 27, at 2; Degener, *10 Years of the CRPD*, *supra* note 27, at 153; see also KANTER, *INTERNATIONAL DISABILITY RIGHTS*, *supra* note 26, at 21–63 (providing a comprehensive account of the CRPD's development and adoption).

29. KANTER, *INTERNATIONAL DISABILITY RIGHTS*, *supra* note 26, at 2.

30. CRPD Ratification Status, *supra* note 13.

31. KANTER, *INTERNATIONAL DISABILITY RIGHTS*, *supra* note 26, at 49–50; Kayess & French, *Introducing the CRPD*, *supra* note 27, at 3; Kanter, *Do Treaties Matter*, *supra* note 3, at 579; Theresia Degener & Andrew Begg, *From Invisible Citizens to Agents of Change: A Short History of the Struggle for the Recognition of the Rights of Persons with Disabilities at the United Nations*, in *THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: A COMMENTARY* 1, 16–17 (Valentina Della Fina, Rachele Cera & Giuseppe Palmisano eds., 2017).

a new understanding about disability as a human rights issue, rather than an issue of individual deficiencies.³² Unlike other human rights treaties, the CRPD developed through a drafting process that included active participation by persons with disabilities.³³ Their perspectives led to the inclusion of new articulations of rights that address the unique circumstances of persons with disabilities.³⁴

This Part first introduces the CRPD's social model of disability as contained in Article 1. Then it explains why this model is significant and fundamental to an understanding of the CRPD itself, as well as Article 24, the right to inclusive education.³⁵

A. The CRPD Social Model of Disability: Emancipation of Persons with Disabilities

The dominant understanding of what constitutes a disability determines how society treats persons with disabilities.³⁶ The earliest understanding of disability came from religion; people believed that disability was an act of God.³⁷ When biomedical science gained traction, so too did the "medical model of disability," which perceives disability as an individual's impairments or defects.³⁸ The medical

32. For a compelling iteration of this argument, see KANTER, *INTERNATIONAL DISABILITY RIGHTS*, *supra* note 26.

33. See KANTER, *INTERNATIONAL DISABILITY RIGHTS*, *supra* note 26, at 21 (discussing the advocacy efforts by individuals, non-governmental organizations, Disabled People's Organizations, and governmental representatives involved in the drafting of the CRPD). For more on the Disabled People Organizations' active participation in the drafting process of the Article 24 Inclusive Education, see Arlene Kanter, *The Right to Inclusive Education for Students with Disabilities Under International Human Rights Law*, in *THE RIGHT TO INCLUSIVE EDUCATION IN INTERNATIONAL HUMAN RIGHTS LAW 15* (Gauthier de Beco, Quinlivan Shivaun & Janet E. Lord eds., 2019) [hereinafter Kanter, *Right to Inclusive Education*].

34. Kanter, *Right to Inclusive Education*, *supra* note 33, at 16.

35. CRPD art. 24, *supra* note 8.

36. See Julie F. Smart, *Models of Disability: The Juxtaposition of Biology and Social Construction*, in *HANDBOOK OF REHABILITATION COUNSELING 25*, 25–29 (T.F. Riggart & Dennis R. Maki eds., 2004) (explaining why the social model of disability is important).

37. Marno Retief & Rantosa Letšosa, *Models of Disability: A Brief Overview*, 74 *HTS THEOLOGIESE STUD./THEOLOGICAL STUD.* 1, 2 (2018) (S. Afr.).

38. See Carol Thomas, *Medical Sociology and Disability Theory*, in *NEW DIRECTIONS IN THE SOCIOLOGY OF CHRONIC AND DISABLING CONDITIONS 37*, 37–41 (Graham Scambler & Sasha Scambler eds., 2010) (tracing the rise of the medical model of disability alongside biomedical science); Steven R. Smith, *Social Justice and Disability: Competing Interpretations of the Medical and Social Models*, in *ARGUING ABOUT DISABILITY: PHILOSOPHICAL PERSPECTIVES 15*, 15–26

model of disability deems disability an illness of human beings waiting to be cured, viewing people with impairments as “deficient” and/or “subnormal.”³⁹ The medical model of disability is usually intertwined with the “charity model,” which perceives of persons with disabilities as victims of illness who depend on the goodwill of non-disabled people to receive services and be included in society.⁴⁰ The medical model and charity model of disability portray persons with disabilities as objects of pity and who possess less dignity and value.⁴¹

Longstanding in almost every culture and society,⁴² the medical and charity models of disability have resulted in the unjust treatment of persons with disabilities, rife with harmful actions masquerading as benevolence, including incarceration, institutionalization, and forced sterilization.⁴³ The social model of disability arose in response to the medical and charity models of disability.⁴⁴

The social model views disability not as an outcome of an impairment but as the result of inaccessible environments and oppression.⁴⁵ The social model of disability focuses on social barriers

(Kristjana Kristiansen, Simo Vehmas & Tom Shakespeare eds., 2009) (contrasting the medical and social models of disability).

39. Thomas, *supra* note 38, at 38.

40. Retief & Letšosa, *supra* note 37, at 6.

41. See *infra* notes 42–43 and accompanying text (illustrating how people with disabilities have historically been categorized, segregated, and devalued).

42. For example, three thousand years ago in ancient China, disabilities were categorized as vision, hearing, language, limb, intellectual, multiple, and other disabilities. KANTER, INTERNATIONAL DISABILITY RIGHTS, *supra* note 26, at 38. Modern Chinese law still recognizes these classifications, which focus purely on the individual’s body. *Id.*; see generally HENRI-JACQUES STIKER, A HISTORY OF DISABILITY (William Sayers trans., 2019) (1997) (exploring disability history in different parts of the world). For a collection of academic works delving into the segregation and confinement of individuals with disabilities in the United States and Canada, see DISABILITY INCARCERATED: IMPRISONMENT AND DISABILITY IN THE UNITED STATES AND CANADA (Liat Ben-Moshe, Chris Chapman & Allison C. Carey eds., 2014). For a similar collection of works exploring disability history in different parts of the world, see THE ROUTLEDGE HISTORY OF DISABILITY, *supra* note 26.

43. See Laura I. Appleman, *Deviancy, Dependency, and Disability: The Forgotten History of Eugenics and Mass Incarceration*, 68 DUKE L.J. 417, 437–46 (2018) (tracing the historical connections between eugenics, disability, and mass incarceration).

44. Tom Shakespeare, *The Social Model of Disability*, in THE DISABILITY STUDIES READER 214, 214 (Lenard J. Davis ed., 4th ed. 2013).

45. Linda J. Graham et al., *Fundamental Concepts of Inclusive Education*, in INCLUSIVE EDUCATION FOR THE 21ST CENTURY: THEORY, POLICY AND PRACTICE

that prevent persons with disabilities from participating in social life on an equal basis with non-disabled people.⁴⁶ The social model of disability is a “groundbreaking” theory that has shifted the focus from the problems within the individual’s body to external conditions and social justice issues.⁴⁷ This model has been instrumental in promoting the disability rights movement by advocating for the removal of physical and social barriers to eliminate discrimination against persons with disabilities.⁴⁸ However, the social model of disability is not perfect; some scholars argue that the strict separation of disability from impairments reinforces the body-mind distinction, and others argue that the social model marginalizes those who prefer non-political and natural approaches to medicine.⁴⁹

The social model is the philosophical basis for the CRPD, which “locates the main ‘problem’ [of disability] outside the person and in society.”⁵⁰ The CRPD also addresses the primary criticism that the social model strictly distinguishes between body and mind, and it recognizes that persons with disabilities are a diverse group of individuals. The CRPD seeks to change the way States Parties understand disability and has also adopted the “human rights model”

27, 27, 32 (Linda J. Graham ed., 1st ed. 2019) [hereinafter Graham et al., *Fundamental Concepts*]; KANTER, INTERNATIONAL DISABILITY RIGHTS, *supra* note 26, at 8; Mike Oliver, *The Social Model of Disability: Thirty Years On*, 28 DISABILITY SOC’Y 1024, 1024 (2013).

46. Dewsbury et al., *supra* note 17, at 146.

47. BILL HUGHES, A HISTORICAL SOCIOLOGY OF DISABILITY: HUMAN VALIDITY AND INVALIDITY FROM ANTIQUITY TO EARLY MODERNITY 54 (2020); Smith, *supra* note 38, at 15.

48. Dewsbury et al., *supra* note 17, at 148; Tom Shakespeare & Nicholas Watson, *The Social Model of Disability: An Outdated Ideology?*, in 2 EXPLORING THEORIES AND EXPANDING METHODOLOGIES: WHERE WE ARE AND WHERE WE NEED TO GO 9, 10–11 (Sharon N. Barnartt & Barbara M. Altman eds., 2001).

49. Other critiques include that the social model tends to overlook barriers caused by certain disabilities or attitudinal barriers that perpetuate disgust, fear, and tragedy associated with disability. The social model fails to address the intersectionality of race, gender, and class, and the impact of disability on the families of persons with disabilities. See Shakespeare & Watson, *Beyond Models*, *supra* note 17, at 59–64 (describing the weaknesses of the social model of disability); Lorella Terzi, *The Social Model of Disability: A Philosophical Critique*, 21 J. APPLIED PHIL. 141, 141 (2004) (providing a critical account of the social model of disability); HUGHES, *supra* note 47, at 59–73 (discussing the social model and its shortcomings).

50. GERARD QUINN ET AL., HUMAN RIGHTS AND DISABILITY: THE CURRENT USE AND FUTURE POTENTIAL OF HUMAN RIGHTS INSTRUMENTS IN THE CONTEXT OF DISABILITY 14 (2002).

of disability.⁵¹ The human rights model recognizes that impairment is a natural part of human diversity that must be respected and supported in all its forms.⁵² According to Article 1 of the CRPD, persons with disabilities are “ensure[d] the full and equal enjoyment of all human rights and fundamental freedoms”⁵³ While the human rights model of disability is essential to the implementation of the CRPD,⁵⁴ it provides limited guidelines for inclusive education policies and practices.⁵⁵ I use the term “CRPD’s social model” in this Article to discuss the implementation of inclusive education with an emphasis on the removal of environmental barriers and the recognition of the social aspects of disability.

B. The Right to Inclusive Education: Ensuring Equity and Access for All

CRPD Article 24, entitled “Education,” requires Member States to provide inclusive education for children and adults with disabilities.⁵⁶ It states that “States Parties shall ensure an inclusive education system at all levels and lifelong learning,” and sets out specific requirements for inclusive education.⁵⁷ Article 24 of the CRPD does not, however, provide a definition of inclusive education.⁵⁸

Other sources suggest that inclusive education is different from special education, which mainly refers to an education system

51. Anna Lawson & Angharad E. Beckett, *The Social and Human Rights Models of Disability: Towards a Complementarity Thesis*, 25 INT’L J. HUM. RTS. 348, 349 (2021).

52. Theresia Degener, *Disability in a Human Rights Context*, 5 LAWS 1, 3 (2016); Lisa Waddington & Mark Priestley, *A Human Rights Approach to Disability Assessment*, 37 J. INT’L COMPAR. SOC. POL’Y 1, 3 (2021).

53. CRPD art. 1, *supra* note 8.

54. Graham et al., *Fundamental Concepts*, *supra* note 45, at 27, 35.

55. Some scholars may disagree with this argument, contending that the human rights model grants individuals who are denied an equal right to education the legal means to pursue that claim—i.e., it translates the lack of educational opportunities into an enforceable legal right. While I agree that the human rights model entitles persons with disabilities to be treated as equals with respect to access to education, the issue here is what form of education they receive. From my understanding, the social model of disability, which focuses on removing barriers, provides more insight into forms of education. *Id.* at 36. For example, in China, disabled persons are not denied education due to their disability but may be forced to attend segregated schools, as discussed *infra* notes 285–287 and accompanying text.

56. CRPD art. 24, *supra* note 8.

57. *Id.*

58. *Id.*

that provides separate schools or classrooms for students with disabilities.⁵⁹ The Salamanca Statement provided the first definition of inclusive education that was adopted by the United Nations: inclusive education is letting “all children . . . learn together wherever possible, regardless of any difficulties or differences they might have.”⁶⁰ However, the Salamanca Statement is not binding on States Parties.⁶¹ The CRPD is the first binding treaty to specifically incorporate an inclusive education system into the necessary protections for the rights of persons with disabilities.⁶²

Indeed, the use of the term “inclusive education” in Article 24 was contested during the drafting process;⁶³ consequently, there is no explicit definition of inclusive education in Article 24 or elsewhere in the CRPD.⁶⁴ This ambiguity was probably also intended to maintain the inherent flexibility of the term “inclusion.”⁶⁵ However, the

59. Michael Shevlin, *Moving Towards Schools for All: Examining the Concept of Educational Inclusion for Disabled Children and Young People*, in *THE RIGHT TO INCLUSIVE EDUCATION IN INTERNATIONAL HUMAN RIGHTS LAW*, *supra* note 33, at 97, 98–99.

60. World Conference on Special Needs Educations, *The Salamanca Statement and Framework for Action on Special Needs Education*, ¶ 7, U.N. Doc. ED.94/WS/18 (June 10, 1994), <https://unesdoc.unesco.org/ark:/48223/pf0000098427> [<https://perma.cc/SE4G-ZARD>] [hereinafter *The Salamanca Statement*]; Kanter et al., *Inclusive Education Under International Law*, *supra* note 28, at 23.

61. Kanter et al., *Inclusive Education Under International Law*, *supra* note 28, at 23.

62. For more on the relationship between Article 24’s inclusive education provision and other previous protections on rights to education, see Kanter, *Right to Inclusive Education*, *supra* note 33.

63. The debate among drafters involved several questions, among them: whether there should be an Article explicitly guaranteeing the right to choose the form of one’s education (e.g., segregated special education); how to define the “best interest” criterion in education for students with disabilities; and whether the right to inclusive education should be confined to children or extended to all individuals. *Id.* at 35–48; see also Rosemary Kayess, *Drafting Article 24 of the Convention on the Rights of Persons with Disabilities*, in *THE RIGHT TO INCLUSIVE EDUCATION IN INTERNATIONAL HUMAN RIGHTS LAW*, *supra* note 33, at 122, 131–39 [hereinafter Kayess, *Drafting Article 24*] (discussing various debates among drafters of Article 24).

64. See generally CRPD, *supra* note 8 (providing for a right to inclusive education without ever defining the term); see also Kayess, *Drafting Article 24*, *supra* note 63, at 132 (acknowledging inclusive education as a core principle but initially failing to enshrine it in drafts of Article 24).

65. Linda J. Graham, *Inclusive Education in the 21st Century*, in *INCLUSIVE EDUCATION FOR THE 21ST CENTURY*, *supra* note 45, at 3, 11 [hereinafter Graham, *Inclusive Education in the 21st Century*] (explaining how the language of

absence of a clear definition has resulted in diverse interpretations and practices among States Parties.⁶⁶ Scholars also contend that Article 24 neither prohibits States Parties from using segregated special education nor requires them to provide inclusive mainstream neighborhood schools or classrooms for every student with disabilities.⁶⁷

Additionally, for States that incorporate inclusive education into their domestic legal systems, the so-called “inclusive” education they offer may, in reality, not be genuinely inclusive.⁶⁸ Moreover, sometimes the phrase “inclusive education” is “deliberately misused and even actively resisted.”⁶⁹ To address this issue, the CRPD Committee—the treaty body responsible for monitoring compliance with the CRPD—released General Comment No. 4 in 2016,⁷⁰ which seeks to provide a clear definition of inclusion in the educational

“inclusive education” is an attempt to “capture and protect inclusion’s inherent flexibility and ongoing nature—an attempt to prevent it from being reduced to a checklist”).

66. See, e.g., Sarah Arduin, *The Expressive Dimension of the Right to Inclusive Education*, in *THE RIGHT TO INCLUSIVE EDUCATION IN INTERNATIONAL HUMAN RIGHTS LAW*, *supra* note 33, at 141, 145–54 (discussing the domestic laws protecting persons with disabilities’ right to education in England, Ireland, France, Norway, and Finland—all State Parties of the CRPD). The presumption in both English and Irish legal systems to enroll children with disabilities into mainstream schools does not appear to be mandated by a detailed examination of Article 24. *Id.* at 164. Likewise, France’s extension of the right to inclusive education for all children, not only children with disabilities, conflicts with the non-discriminatory essence of the right as articulated in Article 24 of the Convention. *Id.* The Norwegian Education Act and the Finnish Act do not explicitly mention the idea of inclusive education. *Id.* Hence, all countries’ legal standards differ from the ones expressed in Article 24 of the CRPD.

67. Kanter, *Right to Inclusive Education*, *supra* note 33, at 48; Arduin, *supra* note 66, at 156–57.

68. Graham has observed through her fieldwork in Australia, that so-called “inclusive education” classrooms often fail to achieve true inclusion. For instance, while students with and without disabilities may share the same physical classroom and attend class simultaneously, the arrangement reflects a clear division: students with disabilities, seated on the left, are instructed by special education teachers using a separate curriculum, whereas students without disabilities, seated on the right, are taught by the mainstream teacher following the mainstream curriculum. Graham, *Inclusive Education in the 21st Century*, *supra* note 65, at 8–9. This is not genuine inclusion.

69. Juliet Davis et al., *Inclusive Education as a Human Right*, in *INCLUSIVE EDUCATION FOR THE 21ST CENTURY*, *supra* note 45, at 79, 88.

70. CRPD, General Comment No. 4, *supra* note 23. The CRPD Committee is established in Article 34 of the CRPD. CRPD art. 34, *supra* note 8. Its duties and role are further articulated in Articles 35, 36, 37, 38, and 39. *Id.* art. 35–39.

context and to differentiate it from other forms of education, including those characterized as exclusive, segregated, and integrated.⁷¹ General Comment No. 4 states in relevant part that “[i]nclusion involves a process of systemic reform embodying changes and modifications in content, approaches, structures and strategies in education, with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences.”⁷²

In addition, reasonable accommodations are mentioned twice in Article 24 as indispensable methods to facilitate education for students with disabilities.⁷³ While Article 24 does not explicitly prohibit segregated special education, it requires States Parties to “realiz[e] this right [to education] without discrimination and on the basis of equal opportunity”⁷⁴ According to Article 2 of the CRPD, refusing to offer reasonable accommodation is a form of disability-related discrimination.⁷⁵ It is therefore clear from the text that the core requirement of inclusive education is the implementation of changes and modifications that remove barriers to participation for students with disabilities.⁷⁶ Taken together, Article 2, Article 24, and

71. According to the CRPD Committee, this provision defines segregation as occurring “when the education of students with disabilities is provided in separate environments designed or used to respond to a particular impairment or to various impairments, in isolation from students without disabilities.” *Id.* ¶ 11. By contrast, “[i]nclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range” *Id.* Meanwhile, “[i]ntegration is a process of placing persons with disabilities in existing mainstream educational institutions, as long as the former can adjust to the standardized requirements of such institutions.” *Id.* The Committee emphasizes that placing students with disabilities within mainstream classes without appropriate support does not constitute inclusion. *Id.*

72. *Id.*

73. CRPD art. 24, ¶¶ 1–2, *supra* note 8.

74. *Id.* art. 24, ¶ 1; *see also* Arduin, *supra* note 66, at 187 (arguing that while inclusive education is for all students not only students with disabilities, Article 24 of the CRPD does not take the universal right approach to the right to inclusive education but is rather a non-discrimination right based on disability identity).

75. CRPD art. 2, *supra* note 8.

76. The Committee echoes this perspective, stating that “reasonable accommodation must be adopted at national, local and education institution levels and at all levels of education.” CRPD, General Comment No. 4, *supra* note 23, ¶ 28.

General Comment No. 4 clarify that inclusive education under the CRPD requires students with disabilities to learn together with non-disabled students in the same classrooms and participate in the same extracurricular school activities with reasonable accommodations and modifications as needed.⁷⁷ While the establishment of specialized segregated schools does not inherently breach Article 24's obligations,⁷⁸ there are instances, as discussed in Part IV, where building such segregated institutions, combined with other systemic issues, might violate the language and intent of Article 24.⁷⁹ While the CRPD and the right to inclusive education hold significant importance as human rights instruments,⁸⁰ few studies address the compliance and effectiveness of the CRPD, including Article 24.⁸¹ Determining the efficacy of human rights treaties is empirical in nature;⁸² it does not probe how the law ought to operate but rather

77. *Id.* However, inclusive education is not only for students with disabilities but for all students regardless of their ability. See Susie Miles & Nidhi Singal, *The Education for All and Inclusive Education Debate: Conflict, Contradiction or Opportunity?*, 14 INT'L J. INCLUSIVE EDUC. 1, 2 (2010) (emphasizing that the focus must be on setting up special classrooms, special schools, and/or rehabilitation centers).

78. It is important to note that Article 24 does not mandate that every student with a disability be educated in mainstream and inclusive neighborhood classrooms. Students with disabilities and their families should have the choice to attend special schools if they wish to do so. The intent of Article 24 should be understood as ensuring that students with disabilities are always entitled to reasonable accommodations in mainstream education. When students are forced into segregated settings due to a lack of adequate support and protection in mainstream environments, it constitutes discrimination based on disability. Kanter, *Right to Inclusive Education*, *supra* note 33, at 48; Arduin, *supra* note 66, at 156.

79. See *infra* Part IV (discussing how States Parties might fail to comply with Article 24).

80. For an explanation of the importance and significance of inclusive education, see Kanter, *Right to Inclusive Education*, *supra* note 33; Kayess, *Drafting Article 24*, *supra* note 63; Davis et al., *supra* note 69.

81. The exception is Kanter's case study of the CRPD. See generally Kanter, *Do Treaties Matter*, *supra* note 3 (arguing that the CRPD "matters" because of its positive impacts for people with disabilities in a variety of spheres).

82. Several studies empirically examine the efficacy of human right treaties. See generally Adam S. Chilton, *The Influence of International Human Rights Agreements on Public Opinion: An Experimental Study*, 15 CHI. J. INT'L. L. 110 (2014) (conducting an experimental survey to investigate whether information about international law affects domestic public opinion on the use of solitary confinement as a human rights issue); Adam S. Chilton, *The Laws of War and Public Opinion: An Experimental Study* (Coase-Sandor Inst. for L. & Econ. Working Paper No. 687, 2014) (empirically testing if public opinion can motivate adherence to the laws of war); Daniel Abebe, Adam Chilton, & Tom Ginsburg, *The*

examines its actual impact.⁸³ Therefore, employing systematic qualitative or quantitative methodologies to gather numerical or textual data is crucial to unearthing the answers.⁸⁴ The next Part examines literature on the compliance and effectiveness of human rights treaties, identifies gaps in current research, and illustrates why the concept of noncompliant effectiveness can bridge this knowledge gap.

II. HUMAN RIGHTS TREATIES DO NOT WORK: EVIDENCE AND ITS LIMITATIONS

Entering the twenty-first century, the critiques on human rights treaties' effectiveness mainly came from scholars who used quantitative empirical methods.⁸⁵ Hathaway is one of the earliest scholars to argue that ratifying human rights treaties not only failed to improve human rights protection, but also, in some cases, made the

Social Science Approach to International Law, 22 CHI. J. INT'L L. 1 (2021) [hereinafter Abebe et al., *Social Science Approach*] (describing the rise of the social science approach, including empirical research methods, and advocating for its continued adoption); Adam Chilton & Dustin Tingley, *Why the Study of International Law Needs Experiments*, 52 COLUM. J. TRANSNAT'L L. 173 (2013) [hereinafter Chilton & Tingley, *International Law Needs Experiments*] (explaining reasons for conducting experimental designs in the international law field).

83. When referring to empirical methods here, I mean the conventional social science methods that clearly state research questions and hypotheses and use research design to test hypotheses and give conclusions with uncertainty. According to H.L.A. Hart's famous differentiation, the so-called empirical study of international law is to observe laws from outside, exploring international laws' real-world impact. See Abebe et al., *Social Science Approach*, *supra* note 82, at 5 (describing Hart's distinction between the "internal" and "external" view of international law (citing H.L.A. HART, *THE CONCEPT OF LAW* (1st ed. 1961)).

84. However, empirical method is neither the only useful method nor necessarily the best method to conduct research on human rights treaties. See *id.* at 7 (arguing that the social science approach is not the only useful way to study international law).

85. For examples of sources using the quantitative method, see Neumayer, *supra* note 1; Hafner-Burton & Tsutsui, *Empty Promises*, *supra* note 1; Oona A. Hathaway, *Testing Conventional Wisdom*, 14 EUR. J. INT'L L. 185 (2003) [hereinafter Hathaway, *Testing Conventional Wisdom*]; Hathaway, *Do Treaties Make a Difference*, *supra* note 1; see also generally Eric A. Posner, *Some Skeptical Comments on Beth Simmons's "Mobilizing for Human Rights"*, 44 N.Y.U. J. INT'L L. & POL. 819 (2012) (contending that the prevalence of intentionally unenforceable human rights treaties is central to the global inability to curb human rights abuses, due to their broad and vague definitions coupled with ineffective enforcement mechanisms).

human rights situation worse.⁸⁶ Since then, quantitative research on the topic has been dominated by a pessimistic outlook on the effectiveness of human rights treaties.⁸⁷ Many subsequent studies interpreted the positive correlation between signing human rights treaties and an increase in reports of human rights violations as evidence of the ineffectiveness of these treaties.⁸⁸ However, these observational studies have a fundamental fallacy: the increased number of reported human rights violations after ratification is likely due to the fact that treaty ratification, through the mobilization of local non-governmental organizations, makes people more aware of rights violations and thus requires States Parties to report such violations.⁸⁹ Without the reporting obligations, the number of reported violations before ratification is likely inaccurate.⁹⁰ Sikkink refers to this phenomenon, in which increased awareness of human rights leads to increased reports of violations, as the “information paradox.”⁹¹ Moreover, the definition of “human rights” is expanding

86. Hathaway, *Do Treaties Make a Difference*, *supra* note 1, at 1990 (using the ratification of human rights treaties as the independent variable and the number of reported human rights violations as the dependent variable. It concluded that the ratification of human rights treaties did not necessarily improve human rights protections and, in some cases, even worsened the situation).

87. See, e.g., Emilie M. Hafner-Burton & James Ron, *Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes*, 61 *WORLD POL.* 360, 370 (2009) (discussing the skepticism expressed by statistical researchers concerning the effectiveness of human rights treaties).

88. For two salient examples, see Neumayer, *supra* note 1; Hafner-Burton & Tsutsui, *Empty Promises*, *supra* note 1.

89. Goodman and Jinks pointed out that if countries are more serious about and protective of human rights, and report human rights violations, they would have a worse score than those that simply do not report human rights violations. Goodman & Jinks, *supra* note 1, at 182–83. Hathaway admitted that her conclusions were based on imperfect data and argued that more vigorous monitoring and reporting standards would improve both our understanding of human rights treaties and their impact on States Parties. Hathaway, *Do Treaties Make a Difference*, *supra* note 1, at 1934–35. For the responses to Goodman and Jinks’s critiques, see Hathaway, *Testing Conventional Wisdom*, *supra* note 85; see also Neumayer, *supra* note 1, at 926, 941 (discussing the role of civil societies in human rights protection).

90. Goodman & Jinks, *supra* note 1, at 182–83.

91. According to Sikkink, the information paradox occurs when human rights treaties and non-governmental organizations work to make invisible harms visible, leading more people to realize that they have rights. KATHRYN SIKKINK, *EVIDENCE FOR HOPE: MAKING HUMAN RIGHTS WORK IN THE 21ST CENTURY* 154 (2017). Then, as more people realize human rights exist, there is a concomitant increase in the number of reported human rights violation. *Id.* However, it does

in scope, and concepts not previously considered to constitute human rights are now recognized by treaties,⁹² including persons with disabilities' right to have reasonable modifications and accommodations.⁹³

In addition, the definition of human rights violations is subject to various interpretations, which has resulted in the use of different databases and measurement methods to assess human rights situations.⁹⁴ The choice of different human rights databases may lead to contradictory conclusions.⁹⁵

Most importantly, the question as to whether human rights treaties matter is thorny, not least because the definition of "matter" is unclear in the first place.⁹⁶ For most scholars using the observational quantitative method,⁹⁷ whether a treaty "matters" is a

not mean that human rights treaties make the human rights situation worse but rather that this situation brings new attention to the violations.

92. *Id.* at 167.

93. Kanter, *Do Treaties Matter*, *supra* note 3, at 601.

94. Commonly used databases include the World Bank's World Development Indicators, Amnesty International reports, and U.S. State Department reports. *See, e.g.*, Neumayer, *supra* note 1, at 935 (using Amnesty International reports and U.S. State Department reports); Hathaway, *Do Treaties Make a Difference*, *supra* note 1, at 1967 (using U.S. State Department reports); Hafner-Burton & Tsutsui, *Empty Promises*, *supra* note 1, at 1391–92 (using the World Bank's World Development Indicators); Hill & Watson, *Democracy and Compliance*, *supra* note 5, at 131 (using the World Bank's World Development Indicators). The World Development Indicators primarily contain outcomes-based measures, while Amnesty International reports and U.S. State Department reports include both outcome-based and process-based measures. SIOBHAN MCINERNEY-LANKFORD & HANS-OTTO SANO, HUMAN RIGHTS INDICATORS IN DEVELOPMENT: AN INTRODUCTION 5, 17 (2010).

95. For example, the democratic system of a State's government was a strong predictor of countries that would ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Hill & Watson, *Democracy and Compliance*, *supra* note 5, at 127, 129. However, Hill and Watson found that the presence of a democratic system of government did not influence a country's practice of protecting or violating women's rights after ratifying CEDAW without reservations. *Id.* at 132. One reason for this discrepancy may be the use of different databases for measuring women's human rights. Hill and Watson rely on the World Bank database, which primarily focuses on cultural and economic rights, *id.*, while previous studies used databases based on human rights violation reports by other organizations, Neumayer, *supra* note 1, at 935; Hathaway, *Do Treaties Make a Difference*, *supra* note 1, at 1967.

96. Kanter, *Do Treaties Matter*, *supra* note 3, at 582.

97. Observational studies are those in which the investigator is not acting upon study participants but instead observing natural relationships between factors and outcomes. In other words, the researcher does not manipulate the

question of whether it drives compliance with human rights treaties with an assumption that after ratification, fewer human rights violations should be reported.⁹⁸ If the model fails to show any significant negative association between the ratification of treaties and reported human rights violations, then the States Parties are seen as noncompliant and/or ineffective.⁹⁹ Thus, human rights treaties that do not improve “respect for human rights” are considered “empty promises”¹⁰⁰ and do not “matter.” Some scholars have gone so far as to find that ratification of human rights treaties makes domestic human rights situations even worse.¹⁰¹ However, it is important to note that observational studies cannot definitively establish causation between ratification and increased reporting of human rights violations.¹⁰² This positive relationship between

independent variables. For a detailed discussion on the difference between observational and interventional studies, see Matthew S. Thiese, *Observational and Interventional Study Design Types; An Overview*, 24 *BIOCHEMIA MEDICA* 199 (2014).

98. Hathaway, *Do Treaties Make a Difference*, *supra* note 1, at 1994; Hafner-Burton & Tsutsui, *Empty Promises*, *supra* note 1, at 1398; Neumayer, *supra* note 1, at 935–36.

99. Hathaway, *Do Treaties Make a Difference*, *supra* note 1, at 1994.

100. See Hafner-Burton & Tsutsui, *Empty Promises*, *supra* note 1, at 1373 (arguing that countries that ratify more human rights treaties are associated with worse human rights practices).

101. Hathaway, *Do Treaties Make a Difference*, *supra* note 1, at 1992; Neumayer, *supra* note 1, at 941 (arguing in pure autocracies without strong civil societies, ratification of human rights treaties is associated with more human rights violations).

102. There are several reasons why observational designs cannot establish causation—only correlation—particularly in the context of human rights treaties’ effectiveness debates. First, observational designs lack control over variables. Without this control, it is challenging to eliminate other factors that might be influencing the relationship. Second, hidden or unknown variables may create a false correlation. For example, suppose there is a positive correlation between the improvement in women’s status and ratification of CEDAW in statistics. In that case, you might mistakenly believe that ratifying CEDAW causes improvement. However, the actual underlying factor might be the economic advancement of women. Third, it is difficult to determine causation even when a strong correlation exists. Is ratification of CEDAW causing women’s status to improve, or is the improvement in women’s status leading to the ratification of CEDAW? Without manipulating the variables, discerning this cause-and-effect relationship is often impossible. Finally, selection bias is unavoidable in observational studies of the effectiveness of human rights treaties. Countries do not randomly ratify human rights treaties, so selecting States Parties to study for specific treaties is never truly random. Consequently, the groups being compared may not be equivalent in aspects other than the independent variable being studied. Without random assignment, it is hard to ensure that the observed effects stem from the variable

ratification and reported violations is merely associational.¹⁰³ Additionally, relying solely on numbers on paper may not fully capture the complexity of the human rights situation since statistical significance does not necessarily translate into real-world improvements.¹⁰⁴

Another issue is that many articles interpreting “matter” as “compliance” fail to provide a definition of compliance in the first place.¹⁰⁵ Compliance refers to conformity between States Parties’ behavior and a human rights treaty’s requirements or standards,¹⁰⁶ but it cannot fully capture the human rights treaty’s effect.¹⁰⁷

However, compliance and effectiveness are indeed two different concepts.¹⁰⁸ Unlike compliance as a dichotomy that only

of interest rather than other group differences. *See* Convention on the Elimination of All Forms of Discrimination Against Women, adopted December 18, 1979 Dec. 18, 1979, 1249 U.N.T.S. 13. (entered into force September 3, 1981) [hereinafter CEDAW]; Chilton & Tingley, *International Law Needs Experiments*, *supra* note 82, at 190–219; Adam Chilton, *Experimentally Testing the Effectiveness of Human Rights Treaties*, 18 CHIC. J. INT. LAW 166, 175–80 (2017) [hereinafter Chilton, *Testing Human Rights Treaties*].

103. Chilton & Tingley, *International Law Needs Experiments*, *supra* note 82, at 177, 178; Chilton, *Testing Human Rights Treaties*, *supra* note 102, at 175.

104. *See generally* Valentin Amrhein et al., *Scientists Rise Up Against Statistical Significance*, 567 NATURE 305 (2019) (discussing the limitations of statistical significance).

105. Some notable examples of articles that omit this definition include Neumayer, *supra* note 1; Hafner-Burton & Tsutsui, *Empty Promises*, *supra* note 1; Posner, *supra* note 85.

106. Robert Howse & Ruti Teitel, *Beyond Compliance: Rethinking Why International Law Really Matters*, 1 GLOB. POL’Y 127, 128 (2010); Raustiala, *Compliance & Effectiveness*, *supra* note 6, at 388; Raustiala & Slaughter, *International Compliance*, *supra* note 6, at 711. However, Kingsbury has criticized this definition of compliance as “a correspondence of behavior with legal rules” as too simple. Benedict Kingsbury, *The Concept of Compliance as a Function of Competing Conceptions of International Law*, 19 MICH. J. INT’L L. 345, 346 (1998) [hereinafter Kingsbury, *Compliance*]. He argues that the idea of “compliance” depends on our understanding, based on legal theories, of what the law is and how the law works; different legal theories lead to different explanations about what it means to comply with law. *Id.* Therefore, the concept of “compliance” cannot be studied or understood without having a shared theory about what the law is. *Id.*

107. Howse & Teitel, *supra* note 106, at 130.

108. *See* Raustiala, *Compliance & Effectiveness*, *supra* note 6, at 388 (defining compliance as “conformity between behavior and a legal rule or standard” and effectiveness as “the degree to which a legal rule or standard induces desired changes in behavior”); Raustiala & Slaughter, *International Compliance*, *supra* note 6, at 711–12 (defining compliance as “a state of conformity or identity between an actor’s behavior and a specified rule” and effectiveness as “as the

includes compliance or noncompliance,¹⁰⁹ effectiveness refers to the degree to which a human rights treaty's rules or standards produce the desired changes in behavior.¹¹⁰ Later scholars realized that the dichotomous understanding (i.e., compliant or noncompliant) is too limited, so they broadened the definition of compliance by including "partial compliance."¹¹¹ However, partial or conditional compliance is, in fact, an aspect of human rights treaties' effectiveness because it also focuses on the "degree" of producing desirable behavior according to the legal standard. Thus, this Article chooses to distinguish effectiveness theory from compliance theory.

Compliance is an important aspect of understanding the potential of human rights treaties, but not the only one.¹¹² If scholars equate compliance with effectiveness, their measurements of human rights treaties may be inaccurate; for example, low compliance does not necessarily indicate low effectiveness, and high compliance may still result in low effectiveness.¹¹³ This is because compliance can

degree to which a rule induces changes in behavior that further the rule's goals; improves the state of the underlying problem; or achieves its policy objective").

109. Raustiala, *Compliance & Effectiveness*, *supra* note 6, at 388–89.

110. *Id.*

111. Later scholars argue that compliance is not a dichotomy and there is a middle place called "partial compliance," which is not transitional but a "relatively stable end point," meaning that States Parties would partially comply with human rights treaties for a long time but would probably never comply fully. Darren Hawkins & Wade Jacoby, *Partial Compliance: A Comparison of the European and Inter-American Courts of Human Rights*, 6 J. INT'L L. & INT'L REL. 35, 36 (2010). Another theory is that compliance can be "conditional," which means States Parties' characteristics affect their behavior to comply with human rights treaties. Such characteristics include democratic level, judicial independence, number of non-governmental organizations, and recognition of human rights in national constitutions. For more on these characteristics, see Hafner-Burton & Tsutsui, *Empty Promises*, *supra* note 1; Neumayer, *supra* note 1; Hill & Watson, *supra* note 5. Note that "partial compliance" is different from "conditional compliance," the latter of which means States Parties' characteristics affect their behavior to comply with human rights treaties. Neumayer, *supra* note 1, at 926. While partial compliance focuses on the level of compliance with treaties, conditional compliance looks at the factors that influence a State Party's behavior, such as democracy level or judicial independence. Hill & Watson, *Democracy and Compliance*, *supra* note 5, at 127.

112. Raustiala, *Compliance & Effectiveness*, *supra* note 6, at 388.

113. *Id.* at 392; Raustiala & Slaughter, *International Compliance*, *supra* note 6, at 711–12 (arguing that if international treaty requirements match current practice, then implementation is unnecessary and compliance is automatic but asserting that the treaty would not be considered "effective" within the State Party).

occur even without the intentional implementation of treaties.¹¹⁴ For instance, certain countries demonstrate near-perfect compliance with the quotas established by international whaling accords.¹¹⁵ This compliance, however, is not necessarily due to the effectiveness of these countries' treaty implementation, but simply because they do not have a history of whaling.¹¹⁶ In other words, such treaties can be effective in States that have significant noncompliance if there are changes in behaviors toward the treaty standards.

Furthermore, countries are more willing to ratify international laws that have similarities within domestic practice.¹¹⁷ In such cases, compliance with treaties may be high but the effectiveness is not necessarily demonstrated, since States Parties do not need to change their existing domestic practices in order to comply. Further, focusing solely on the conformity between legal standards and actors' behavior may not always lead to positive and desirable outcomes, especially when procedural compliance takes precedence over substantive goals.¹¹⁸ Thus, distinguishing effectiveness from compliance is necessary to understand the full impact of human rights treaties.

Quantitative studies on the effectiveness of human rights treaties tend to focus at the macroscopic level, providing a broad overview of their impacts.¹¹⁹ However, improvements are often

114. Raustiala & Slaughter, *International Compliance*, *supra* note 6, at 711–12.

115. Raustiala, *Compliance & Effectiveness*, *supra* note 6, at 392.

116. *Id.* at 393.

117. SIMMONS, *supra* note 25, at 13, 28.

118. A pertinent example is offered by Catherine Voulgarides, who has argued that some district schools comply with the procedural requirements of the Individuals with Disabilities Education Act (IDEA) by holding a formal Individual Education Plan (IEP) meeting for students with disabilities. CATHERINE KRAMARCZUK VOULGARIDES, DOES COMPLIANCE MATTER IN SPECIAL EDUCATION? IDEA AND THE HIDDEN INEQUITIES OF PRACTICE 28, 29 (2018). However, this procedural compliance does not necessarily translate into the desired educational outcomes, as students of color are disproportionately placed in special education programs. *Id.* at 31, 32. In this regard, while the schools may be technically complying with IDEA, the effectiveness of the law is compromised at best, and at worst it may be misused to segregate students of color.

119. For a more detailed discussion of the macroscopic method showing the statistical significance of ratifying the CEDAW vis-à-vis improvements in women's situations, see Hill & Watson, *Democracy and Compliance*, *supra* note 5. For a discussion on the microscopic method exploring how the efforts of non-governmental organizations convey the substantive of the CEDAW to the grassroots level of women's fight for the equal right to inherit property, see ENGLE MERRY, *supra* note 4.

gradual and occur in an unordered manner, which makes longitudinal studies (i.e., evaluations over the course of decades) on the effectiveness of human rights treaties crucial.¹²⁰ In addition, attempting to draw a conclusive answer on the effectiveness of all human rights treaties may be too ambitious since each treaty has a different purpose,¹²¹ and States Parties have different levels of acceptance of these treaties.¹²² And considering the economic and cultural disparities among States Parties, it would be imprudent to formulate a general conclusion for all countries.

Thus, the question of whether human rights treaties matter cannot be definitively answered by a single study. Instead, inquiries into the effectiveness of human rights treaties should be tailored to specific countries, treaties, and rights.¹²³ A more pertinent question would be whether a particular human rights treaty changes the specific rights of stakeholders in a given country and how these rights have evolved over time. Neglecting evidence from practice could result in overlooking the subtle yet significant changes that these human rights treaties bring to the citizens of States Parties, and case studies can provide insights that situate and contextualize such issues.¹²⁴

As discussed in the next Part, the practices of education for persons with disabilities in China, Japan, and Korea were far from the standards of the CRPD before these countries signed the treaty. They represent arguably the least likely cases where compliance and/or effectiveness of the CRPD would be observed. Therefore, their

120. Kanter, *Do Treaties Matter*, *supra* note 3, at 579.

121. For example, the CRC aims to protect children's right, CEDAW aims to protect women's rights, and the CRPD aims to protect persons with disabilities' rights.

122. *See supra* note 7 and accompanying text.

123. *See generally, e.g.*, Hill & Watson, *Democracy and Compliance*, *supra* note 5 (measuring the relationship between the strength of a State's democratic institutions and its compliance with CEDAW).

124. Case studies on the impact of human rights treaties have provided scholars with evidence that challenges traditional theories. For example, while U.S. efforts to enforce human rights treaties succeeded in Argentina, they failed in Guatemala, despite Guatemala's greater economic dependence on the United States. Kathryn Sikkink & Lisa L. Martin, *U.S. Policy and Human Rights in Argentina and Guatemala, 1973-1980*, in *DOUBLE-EDGED DIPLOMACY: INTERNATIONAL BARGAINING AND DOMESTIC POLITICS* 330, 331 (Peter Evans, Harold Jacobson, & Putnam Robert ed., 1993). This contradicts the conventional theory that smaller, more dependent countries are more susceptible to external human rights pressure. *Id.* Case studies also confirmed that transitional activities networks could have a positive impact in implementing human rights treaties. *Id.*

noncompliant effective implementation of the CRPD's standards marks significant progress in societies that are full of ableism and elitism in education.

III. ELITISM AND ABLEISM: MAJOR BARRIERS TO INCLUSIVE EDUCATION IN EAST ASIA

Many studies about human rights in Asian countries focus on whether the universal values conveyed by human rights indeed fit all cultures.¹²⁵ Human rights are often considered “Western,” and they are sometimes seen as incompatible with Asian values due to historical and cultural differences.¹²⁶ Some scholars and Asian country leaders have argued, for example, that so-called universal values—particularly political and civil rights—do not fit within Asian culture.¹²⁷ Therefore, the debate over human rights in Asia has

125. See generally, e.g., Damien Kingsbury, *Universalism and Exceptionalism in “Asia,”* in HUMAN RIGHTS IN ASIA: A REASSESSMENT OF THE ASIAN VALUES DEBATE 19 (Leena Avonius & Damien Kingsbury eds., 2008) [hereinafter Kingsbury, *Universalism and Exceptionalism*] (discussing different claims to universal human rights in the context of Asian culture); MICHAEL JACOBSEN & OLE BRUUN, HUMAN RIGHTS AND ASIAN VALUES: CONTESTING NATIONAL IDENTITIES AND CULTURAL REPRESENTATIONS IN ASIA (2000) (discussing the challenges of implementing universal human rights in Asian countries).

126. Ann Kent, *China’s Human Rights in ‘the Asian Century’*, in HUMAN RIGHTS IN ASIA 187, 187 (Thomas W.D. Davis & Brian Galligan eds., 2011) [hereinafter Kent, *China’s Human Rights*].

127. Some Asian leaders, like former Singapore Prime Minister Lee Kuan Yew, reject universal human rights values because they fear that political rights, like freedom, would lead to rapid societal changes and unrest. Leena Avonius & Damien Kingsbury, *Introduction*, in HUMAN RIGHTS IN ASIA: A REASSESSMENT OF THE ASIAN VALUES DEBATE, *supra* note 125, at 1, 7. Lee then defended authoritarianism, believing that it would provide a stable society and be effective in promoting economic success. *Id.* However, Amartya Sen argues that there is little evidence to show that authoritarian arrangements benefit economic development, and causation cannot be drawn from the research that supports authoritarian governments. AMARTYA SEN, HUMAN RIGHTS AND ASIAN VALUES 10–13 (1997). Furthermore, with the Asian Financial Crisis that occurred in the late 1990s and the decline of Singapore, authoritarianism cannot be justified by guaranteeing rapid economic development anymore. Lauri Paltemaa, *Human Rights from the Left: The Early Chinese Democracy Movement*, in HUMAN RIGHTS IN ASIA: A REASSESSMENT OF THE ASIAN VALUES DEBATE, *supra* note 125, at 63, 64. Nevertheless, the debate about “Asian values” has not disappeared yet. See Jau-hwa Chen, *Asia Values? Why Not, But How?*, in HUMAN RIGHTS IN ASIA: A REASSESSMENT OF THE ASIAN VALUES DEBATE, *supra* note 125, at 42, 43–44 (discussing the Asian values debate after the Asian Financial Crisis); Kingsbury, *Universalism and Exceptionalism*, *supra* note 125, at 19 (discussing Asian values in the human rights exceptionalism debate).

largely centered on whether, and how, Asian societies might be exceptions to universal human rights values.¹²⁸

Nevertheless, not all Asian countries support such “Asian Exceptionalism,” and their involvement in such debates varies.¹²⁹ For example, China is very active in resisting “Western values” and even promoting “Chinese values.”¹³⁰ In contrast, Japan and Korea are more receptive to universal human rights values, partly due to their democratic political systems and close relationships with the United States.¹³¹

At the same time, China, Japan, and Korea share some foundational philosophical or cultural norms that affect how they approach disability rights. While these three countries have different political systems and levels of economic development, they “share Confucian cultures as an underlying basic belief system and set of social values.”¹³² Confucian cultures are those rooted in Confucianism, an ethical system that emphasizes the importance of hierarchy—striving for a harmonious social order based on unequal social status—and which construes education as a method to identify elites who can serve the government.¹³³ According to Confucius,

128. Kent, *China's Human Rights*, *supra* note 126, at 130.

129. Most Asian countries today have signed at least two of the nine core U.N. human rights treaties. For example, all Asian countries have ratified the CRC and CEDAW, as one can see by searching the ratification status of these treaties at *U.N. Treaty Body Database*, U.N. HUM. RTS. TREATY BODIES, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?utm_source=chatgpt.com [<https://perma.cc/R4M6-TFLH>]. This signals some degree of rejection of the “Asian Exceptionalism” theory.

130. Kent, *China's Human Rights*, *supra* note 126, at 188; Ann Kent, *Chinese Values and Human Rights*, in *HUMAN RIGHTS IN ASIA: A REASSESSMENT OF THE ASIAN VALUES DEBATE*, *supra* note 125, at 83.

131. The United States helped Japan draft its 1947 Constitution after World War II and assisted South Korea in creating a model legal system after the Korean War. See generally Chaihark Hahm & Sung Ho Kim, *To Make “We the People”: Constitutional Founding in Postwar Japan and South Korea*, 8 INT'L J. CONST. L. 800 (2010) (providing detailed discussion about constitutional development in Japan and Korea).

132. M. Jae Moon, Masao Kikuchi & Sabinne Lee, *Policy Education in South Korea and Japan: Similar Beginnings but Different Directions?*, 16 J. ASIAN PUB. POL'Y 13, 15 (2023).

133. See Yan Bing Zhang et al., *Harmony, Hierarchy and Conservatism: A Cross-Cultural Comparison of Confucian Values in China, Korea, Japan, and Taiwan*, 22 COMM'N. RSCH. REPS. 107, 108 (2005) (discussing hierarchy in Confucian values); Terri Kim, *Confucianism, Modernities and Knowledge: China, South Korea and Japan*, in *INTERNATIONAL HANDBOOK OF COMPARATIVE EDUCATION* 857, 857–58 (Robert Cowen & Andreas M. Kazamias eds., 2009)

education is a moral training that teaches people to “be obedient,”¹³⁴ and “meritocratic selection” based on understanding of Confucianism is “the heart of governing elite culture.”¹³⁵ Starting from the Sui Dynasty in ancient China, civil service standardized examinations—which tested memorization of classic Confucian texts rather than creative thinking or problem-solving skills—were the only pathway for lower class people, such as farmers, to move upward to higher classes, such as government officers, and receive the corresponding respect and prestige.¹³⁶ This system is called imperial examination (*keju*) and was maintained for over thirteen hundred years in ancient China.¹³⁷

Historically, Japan and Korea both employed a similar Confucian education model to satisfy their political purposes.¹³⁸ Korea even implemented a similar *keju* system for around nine hundred years.¹³⁹ While each country entered modernization by different paths, this exam-centered Confucian education model continues to influence the three societies.¹⁴⁰ Education remains the main avenue

[hereinafter Kim, *Confucianism, Modernities and Knowledge*] (discussing Confucian values in China, Japan, and South Korea); Takayasu Nakamura, *Educational Aspirations and the Warming-up/Cooling-down Process: A Comparative Study Between Japan and South Korea*, 6 SOC. SCI. JAPAN J. 199, 218 (2003) (discussing the importance of exams in selecting elites).

134. Kim, *Confucianism, Modernities and Knowledge*, *supra* note 133, at 860.

135. *Id.*

136. Shuhan Yan, *Educational Dilemmas in East Asia: The Impact of Confucianism in Modern Society*, 18 LECTURE NOTES EDUC. PSYCH. & PUB. MEDIA 272, 275 (2023); *see also* Kim, *Confucianism, Modernities and Knowledge*, *supra* note 133, at 859 (discussing the history of China’s *keju* civil service test).

137. Yan, *supra* note 136, at 275; Ting Chen, James Kai-sing Kung & Chicheng Ma, *Long Live Keju! The Persistent Effects of China’s Civil Examination System*, 130 ECON. J. 2030, 2034 (2020) (pointing out that the *keju* system became fully institutionalized in the Ming Dynasty).

138. Zhang et al., *supra* note 133, at 108.

139. Nakamura, *supra* note 133, at 205 n.4.

140. For example, in all three countries, students need to take exams to advance from junior high school to senior high school, and which school they go to usually depends solely on their exam scores. High exam scores tend to enable students to attend prestigious senior high schools that have high rate of university matriculation. These entrance exams are very competitive. Therefore, there is a strong learning culture towards various examinations and certifications. *See generally* Mini Gu & Jessica Magaziner, *The Gaokao: History, Reform, and Rising International Significance of China’s National College Entrance Examination*, WORLD EDUC. NEWS + REVS. (2016), <https://wenr.wes.org/2016/05/the-gaokao-history-reform-and-international-significance-of-chinas-national-college-entrance-examination> [<https://perma.cc/G8BL-G9J8>] (discussing the difficulty of China’s National

for upward mobility within the social hierarchy.¹⁴¹ Like other societies, the education system in Asian countries is a structure of selection, but China's, Japan's, and Korea's school education system in particular serves "the purpose of examination-based selection."¹⁴² Parents across these three countries are particularly enthusiastic about their children's academic success in the form of exam scores and prestigious universities.¹⁴³ This has resulted in "educational fever"—a zeal for education to secure prestige and economic success—and widespread private tutoring on examination subjects.¹⁴⁴

Societies rooted in Confucian culture also tend to value sameness or homogeneity, which makes people less likely to

College Entrance examination); Park Jun-hee, *Is Korea's College Entrance Exam Too Difficult?*, KOR. HERALD (2023), <https://m.koreaherald.com/view.php?ud=20230625000149> [<https://perma.cc/MHG2-QG2B>] (discussing how competitive the Korean college entrance exam is); Yoko Yamamoto & Mary C. Brinton, *Cultural Capital in East Asian Educational Systems: The Case of Japan*, 83 SOCIO. EDUC. 67 (2010) (examining Japan's entrance exam).

141. Kim, *Confucianism, Modernities and Knowledge*, *supra* note 133, at 866.

142. *Id.* at 865.

143. Hyunjoon Park & Youngshin Lim, *Student Participation in Private Supplementary Education: A Comparative Analysis of Japan, Korea, Shanghai, and the USA*, 6 CHINESE J. SOCIO. 239, 241 (2020); Walter Dawson, *Private Tutoring and Mass Schooling in East Asia: Reflections of Inequality in Japan, South Korea, and Cambodia*, 11 ASIA PAC. EDUC. REV. 14, 14 (2010); Thomas Anderson & Hans-Peter Kohler, *Education Fever and the East Asian Fertility Puzzle: A Case Study of Low Fertility in South Korea*, 9 ASIAN POPULATION STUD. 196, 200 (2013); Yi Chen et al., *Education Fever in China: Children's Academic Performance and Parents' Life Satisfaction*, 22 J. HAPPINESS STUD. 927, 927 (2021) [hereinafter Chen et al., *Education Fever*]. As a result, students from these countries regularly perform better than their Western counterparts in international standardized examinations, such as the Programmed for International Student Assessment (PISA). See 1 ORG. FOR ECON. CO-OPERATION & DEV., PISA 2022 RESULTS: THE STATE OF LEARNING AND EQUITY IN EDUCATION 27–27 (2023), https://www.oecd.org/en/publications/pisa-2022-results-volume-i_53f23881-en.html [<https://perma.cc/E4S5-7AUP>] (summarizing high-level trends in PISA scores); see also Mikyung Shin & Nari Choi, *The Invisible Population of Students with Learning Disabilities in South Korea*, 57 INTERVENTION SCH. & CLINIC 194, 195–96 (2022) (discussing the challenges in identifying students with learning disabilities in South Korea and arguing that part of the problem is limited public awareness).

144. Chen et al., *Education Fever*, *supra* note 143, at 927; Jeong-Kyu Lee, *Educational Fever and South Korean Higher Education*, 8 REV. ELECTRÓNICA INVESTIGACION EDUCATIVA 1, 1 (2006), <https://redie.uabc.mx/redie/article/view/118> [<https://perma.cc/G4N8-UW2P>].

rationally understand different bodies and minds.¹⁴⁵ While Confucian values encourage people to help persons with disabilities, this stems from a perspective of persons with disabilities as objects of the perfect man's (*junzi*) benevolence (*ren*), rather than as equal human beings—an example of the charity model of disability.¹⁴⁶ Disability itself is considered as an inharmonious microcosm of the universe, incompatible with the Confucian focus on social harmony.¹⁴⁷ Being a *junzi* is the goal of Confucian education, and the primary requirement of being *junzi* is a normal and healthy body.¹⁴⁸ This understanding makes it nearly impossible for a person with disabilities to be a *junzi*, and having a disability would lead one to be screened out in the *keju* system.¹⁴⁹ In other words, Confucian cultures predominantly understand disability as an individual deficiency and tragedy.

Asian societies are commonly collectivistic and family-oriented,¹⁵⁰ and a person represents not only themselves but the whole family.¹⁵¹ Consequently, Asian families usually take the primary responsibility to care for and support their members with disabilities.¹⁵² Disability therefore not only represents an individual's failure but also the family's misery.¹⁵³ In addition, many traditional Asian cultures considered disability to be a penalty from God—a penalty for which the family bore the blame, since many societies also believed that the disability implies that the parents or ancestors did something wrong.¹⁵⁴ As a result, families usually keep any children with disabilities away from the community.¹⁵⁵ Non-disabled people are generally valued over persons with disabilities, which embeds

145. Hye Young Kim & Robin L. Dodds, *Disclosing the Child's Autism Spectrum Disorder: Perspectives of First-Generation Immigrant Korean Mothers in the US*, 40 *DISABILITY & SOC'Y* 833, 846 (2025).

146. Zhang & Rosen, *supra* note 14, at 1115. For a discussion of the charity and medical models of disability, see *supra* notes 38–41 and accompanying text.

147. Zhang & Rosen, *supra* note 14, at 1116.

148. *Id.*

149. *Id.*

150. Mina C. Chun & Dianne L. Ferguson, *The Intersections of Culture, Disability, and Shame: The Experiences of Emerging Adults with Developmental Disabilities and Their Families in South Korea*, 15 *REV. DISABILITY STUD.* 1, 11 (2019).

151. Kim & Dodds, *supra* note 145, at 846.

152. Zhang & Rosen, *supra* note 14, at 1116.

153. *Id.*

154. *Id.*

155. *Id.*

ableism into almost every aspect of social life.¹⁵⁶ While China, Japan, and Korea have gone through modernization, the medical and charity models of disability and the ableist perspective they promote continue to exist in their cultures and societies.

In traditional East Asian school systems, standardized education curricula and highly competitive entrance exams made it difficult to obtain educational plans based on the needs of students with disabilities.¹⁵⁷ One solution was to build segregated special schools where students with disabilities have their own curricula and do not need to compete with non-disabled students in various entrance exams.¹⁵⁸ This education culture makes implementing inclusive education as required by Article 24 of the CRPD very difficult.¹⁵⁹

Interestingly, however, neither China, Japan, nor Korea made RUDs that interpret or limit their obligations on Article 24,¹⁶⁰ which means that they must fully implement inclusive education. The decision to fully ratify this provision might be because the right to education is predominantly understood as a social-economic right that should be progressively (rather than immediately) achieved,¹⁶¹ which is less threatening to so-called Asian values that themselves

156. For a detailed discussion of ableism that children and youth with disabilities face, see Yiyang Li et al., *Exploring the Experiences of Ableism Among Asian Children and Youth with Disabilities and Their Families: A Systematic Review of Qualitative Studies*, 46 *DISABILITY & REHAB.* 3849 (2024).

157. See generally KANGMIN ZENG, *DRAGON GATE: COMPETITIVE EXAMINATIONS AND THEIR CONSEQUENCES* (1999) (discussing the Confucianism foundation for super competitive examinations in Japan, South Korea, and Taiwan).

158. For a discussion on the reasons for building special schools, see Deng & Poon-McBrayer, *Inclusive Education*, *supra* note 21, at 118.

159. CRPD art. 24, *supra* note 8.

160. Vienna Convention on the Law of Treaties art. 2, ¶ 1(d), *supra* note 13; *CRPD Ratification Status*, *supra* note 13.

161. Progressive realization of human rights treaty obligations means States Parties gradually fulfill economic, social, and cultural rights using maximum resources; these are known as “second-generation” human rights. KANTER, *INTERNATIONAL DISABILITY RIGHTS*, *supra* note 26, at 212–13. In contrast, civil and political rights are “first-generation” human rights that must be implemented immediately upon treaty ratification. *Id.*; see also Gauthier de Beco, *Progressive Realisation and the Right to Inclusive Education*, in *THE RIGHT TO INCLUSIVE EDUCATION IN INTERNATIONAL HUMAN RIGHTS LAW*, *supra* note 33, at 190, 190–91 (discussing the concepts of progressive and immediate realization).

emphasize the importance of education.¹⁶² It may also be because these governments do not fully understand what Article 24 requires them to change: the dominant elitist and ableist culture in their mainstream educational systems.

Elitism and ableism are deeply ingrained in the mainstream education systems of China, Japan, and Korea, which makes them unlikely sites for the CRPD to be effective. For these countries, implementing inclusive education would mean not only placing students with disabilities in mainstream classrooms, but also thoroughly revolutionizing the entire education system in a manner that eliminates deeply embedded ableism and elitism. Achieving such a transformation is a very challenging task and makes compliance with the CRPD nearly impossible. Unsurprisingly then, and as discussed in Part IV, neither China, Japan, nor Korea has fully complied with Articles 2 or 24 of the CRPD.

IV. NONCOMPLIANCE WITH THE CRPD

This Part delves into the issue of compliance, specifically examining the Chinese, Japanese, and Korean governments' noncompliance with the legal obligations set forth by Articles 1, 2, and 24 of the CRPD. Section A analyzes these governments' dominant understanding of disability. This analysis extends to the noncompliant understanding of disability under Article 1 of the CRPD, starting with the officially recognized causes of disability. After discussing definitions of discrimination based on disability and the role of reasonable accommodations in such definitions, Section B argues that China's, Japan's, and Korea's current education policies and practices indicate noncompliance with the mandates of the CRPD's Article 24 on inclusive education.

A. Noncompliant Definitions of Disabilities, Reasonable Accommodations, and Discrimination

The CRPD provides clear definitions for three key concepts in disability law: (1) "persons with disability," or who is entitled to legal protection under the treaty;¹⁶³ (2) "reasonable accommodation," or

162. Frederick K.S. Leung et al., *Mathematics Education in East Asia*, in THE PROCEEDINGS OF THE 12TH INTERNATIONAL CONGRESS ON MATHEMATICAL EDUCATION 123, 138 (Sung Je Cho ed., 2015).

163. CRPD art. 1, *supra* note 8.

how equal treatment is achieved;¹⁶⁴ and (3) “discrimination based on disability,” or whether denial of reasonable accommodation constitutes discrimination based on disability.¹⁶⁵

Article 1, titled “Purpose,” states that “[p]ersons with disabilities *include* those who have long-term . . . impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”¹⁶⁶ Notably, this description is not located in Article 2, titled “Definitions.”¹⁶⁷ This placement suggests that the drafters sought to avoid a strict definition of who qualifies as a person with a disability in order to prevent mistakenly excluding anyone whose disability does not neatly align with such a definition.¹⁶⁸ However, Article 1 clearly recognizes that social barriers are causes of disability, which is the core of the CRPD’s social model.¹⁶⁹ Theoretically, States Parties to the CRPD should recognize this social model of disability in domestic legal systems; but this does not occur in every country. This Section examines China’s, Japan’s, and Korea’s legal systems in light of these important definitions, discussing their noncompliance with Articles 1 and 2 of the CRPD.

1. China

China maintains the purest medical-individual model of disability among the three countries, even after ratifying the CRPD. In the Chinese legal system, persons with disabilities are consistently understood as people who only have impairments that result in dysfunction.¹⁷⁰ Legislators and policymakers fail to acknowledge that

164. The CRPD defines “[r]easonable accommodation” as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.” *Id.* art. 2.

165. The CRPD defines “[d]iscrimination on the basis of disability” as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” *Id.* It also clarifies that this “includes all forms of discrimination, including denial of reasonable accommodation.” *Id.*

166. CRPD art. 1, *supra* note 8 (emphasis added).

167. *Id.* art. 2.

168. KANTER, INTERNATIONAL DISABILITY RIGHTS, *supra* note 26, at 8.

169. CRPD art. 1, *supra* note 8.

170. Chinese law defines disabled persons as follows:

physical and social barriers, which interact with impairments, also contribute to the *cause* of disability.¹⁷¹ This purely individual and medical view of disability permeates all policies, despite China's ratification of the CRPD, which mandates recognition that social and physical barriers contribute to disability.¹⁷² Some policies indeed acknowledge that the lower quality of life for persons with disabilities is due to impairments and "objective conditions,"¹⁷³ a Chinese term that emphasizes the role of social environments in creating such difficulties. While this reference to social factors reflects an understanding that the external environment may contribute to a disabled person's hardships, it does not address the underlying belief that the source of disability itself is the external environment.¹⁷⁴

While Chinese disability-related laws prohibit discrimination based on disability,¹⁷⁵ there is no definition of discrimination in the

A disabled person refers to one who suffers from abnormalities or loss of a certain organ or function, psychologically or physiologically, or in anatomical structure and who has lost wholly or in part the ability to engage in activities in a normal way. "Disabled persons" refer to those with visual, hearing, speech or physical disabilities, mental retardation, mental disorder, multiple disabilities and/or other disabilities.

Canji Ren Baozhang Fa (残疾人保障法) [Disability Protection Act] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 24, 2008, effective July 7, 2008), art. 2 (China), translated in *Law of the People's Republic of China on the Protection of Disabled Persons (2008 Revision)*, LAWINFOCHINA, <http://www.lawinfochina.com/display.aspx?lib=law&id=7015&CGid> [<https://perma.cc/A2CJ-X5AL>]; see also XIANFA art. 45 (1982) (China), translated in *Constitution of the People's Republic of China*, H.K. E-LEGISLATION, <https://www.elegislation.gov.hk/hk/A1%21en-sc.assist.pdf> [<https://perma.cc/SMJ2-CJRK>] (providing no definition of disability or disabled person); Canji Ren Jiaoyu Tiaoli (残疾人教育条例) [Regulation on Education for Persons with Disabilities] (promulgated by the St. Council, Jan. 11, 2017, effective May 1, 2017) (China), https://www.gov.cn/zhengce/content/2017-02/23/content_5170264.htm [<https://perma.cc/NPD6-R5PK>] (providing no definition of disabled persons).

171. Disability Protection Act, art. 2.

172. CRPD art. 1, *supra* note 8.

173. Zhongguo Canji Ren Shiye "Shiyi Wu" Fazhan Gangyao (中国残疾人事业'十一五'发展纲要 (2006年—2010年)) [China's "11th Five-Year" Development Outline for the Cause of People with Disabilities (2006—2010)] (promulgated by St. Council, June 8, 2006) (China), https://www.gov.cn/jrzg/2006-06/08/content_304096.htm [<https://perma.cc/UU6V-NQZB>] ("Due to objective conditions and the impact of their own disabilities, the overall living conditions of people with disabilities still have a significant gap compared to the average social level.").

174. *Id.*

175. 2017 Regulation on Education for Persons with Disabilities, art. 2.

entire legal system.¹⁷⁶ Thus, what constitutes “discrimination based on disability” is not clear. Moreover, no relevant case about disability discrimination or reasonable accommodations in education could be found in the Chinese Judgment Online, the official website that purports to publicize most legal judgments from 2014 to 2023.¹⁷⁷ Accordingly, without clear law or precedent, it is difficult for persons with disabilities and/or their family members to challenge public or private entities’ policies, decisions, or treatments as discriminatory. Since Article 4 of the CRPD requires States Parties to “adopt all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention,”

176. No definition of discrimination is found in the following laws and regulations: XIANFA (1982) (China), *translated in Constitution of the People’s Republic of China*, H.K. E-LEGISLATION, <https://www.elegislation.gov.hk/hk/A1%21en-sc.assist.pdf> [<https://perma.cc/SMJ2-CJRK>]; Disability Protection Act; 2017 Regulation on Education for Persons with Disabilities.

177. ZHONGGUO CAIPAN WENSHU WANG (中国裁判文书网) [CHINESE JUDGMENTS ONLINE] (China), <https://wenshu.court.gov.cn> [<https://perma.cc/9F7W-G6P7>]. In fact, not all cases are published on Chinese Judgments Online, as stipulated by Article 4 of the Supreme People’s Court’s Regulations on the Publication of Court Judgments on the Internet. *Guanyu Renmin Fayuan Zai Hulan Wang Gongbu Caipan Wenshu de Guiding* (关于人民法院在互联网公布裁判文书的规定) [The Provisions on the Publication of Court Judgments on the Internet by People’s Courts] (promulgated by Sup. People’s Ct., Nov. 13, 2013, effective Jan. 1, 2014), art. 4 (China), <http://gongbao.court.gov.cn/Details/d0e837bbafb75a8863b4d4c407d694.html> [<https://perma.cc/6A6G-BY89>]. Local courts are not required to post sensitive cases involving national security or individual privacy. *Id.* art. 4(1). Therefore, the absence of disability-related education cases on Chinese Judgment Online may be because the government and courts consider such cases sensitive and choose not to publicize them. Regardless of the reason, the lack of publicly available cases highlights the Chinese government’s attitude toward persons with disabilities’ right to education. Furthermore, on November 21, 2023, the General Office of the Supreme People’s Court announced that the National Court Judgment Database would be launched in January 2024, accessible only to court personnel through an internal network. *Guanyu Jianshe Quanguo Fayuan Caipan Wenshu Ku De Tongzhi* (关于建设全国法院裁判文书库的通) [Notice on the Construction of a National Court Judgment Document Database] (promulgated by the Gen. Off. of Sup. People’s Ct., Nov. 21, 2023) (China), *translated in Notice on the Construction of a National Court Judgment Document*, CHINA L. TRANSLATE (Dec. 11, 2023), <https://www.chinalawtranslate.com/en/关于建设全国法院裁判文书库的通知> [<https://perma.cc/U9TM-WZBZ>]. This means that Chinese Judgment Online will no longer be open to the public. As a result, systematically collecting legal cases on disability rights in China will no longer be possible.

China's failure to define disability-based discrimination is a clear example of noncompliance with Article 2 of the CRPD.¹⁷⁸

The CRPD also states that denial of reasonable accommodation is a kind of discrimination based on disability.¹⁷⁹ However, there is no definition of reasonable accommodation in the Chinese legal system either. The only provision mentioning reasonable accommodations is Article 52 of the 2017 Chinese Education Regulation, which is limited to when persons with disabilities take national examinations.¹⁸⁰ Yet, as noted above, no cases have been found on Chinese Judgment Online that interpret or apply this Regulation. It thus seems safe to conclude that students' rights to reasonable accommodation in a non-national examination context is not guaranteed by Chinese law. At a broader level, the lack of concrete standards for determining discrimination or guaranteeing other rights set forth in the CRPD makes it difficult to challenge the discriminatory behaviors under the CRPD standards, not only in education, but in nearly every aspect of social life.

2. Japan

Unlike China, Japan revised its definition of disability to recognize the social model of disability after deciding to ratify the

178. CRPD arts. 2, 4, *supra* note 8. In fact, in the Chinese legal system, international laws, including human rights treaties, cannot be directly applied in court, even if the national government has ratified them. Sanzhuan Guo, *Implementation of Human Rights Treaties by Chinese Courts: Problems and Prospects*, 8 CHINESE J. INT'L L. 161, 163–64 (2009). This is because the Chinese Constitution does not specify the applicability of international law. *Id.* at 164. The Chinese government has also stated that these international laws must be incorporated into domestic legislation to have legal effect. Björn Ahl, *Exploring Ways of Implementing International Human Rights Treaties in China*, 28 NETH. Q. HUM. RTS. 361, 365–66 (2010). This is why the lack of a definition of discrimination or reasonable accommodation in the Chinese domestic legal system is so detrimental. See Björn Ahl, *Statements of the Chinese Government Before Human Rights Treaty Bodies: Doctrine and Practice of Treaty Implementation*, 12 AUSTL. J. ASIAN L. 82, 83 (2016) (“Given this background, it is unlikely that the domestic implementation of international human rights obligations is driven by an internationalist approach, which ensures an effective translation of international human rights into the PRC legal system.”).

179. CRPD art. 2, *supra* note 8.

180. 2017 Regulation on Education for Persons with Disabilities, art. 52 (“Where persons with disabilities participate in national education testing and require necessary conditions for support and reasonable accommodations to be provided, they may submit an application. Educational testing bodies and schools shall follow relevant national provisions to so provide.”).

CRPD. The Japanese Basic Act for Persons with Disabilities was amended in 2011 and defines persons with disabilities as those “who are in a state of facing substantial limitations in their continuous daily life or social life because of a disability or a social barrier.”¹⁸¹ However, derogatory language based on the medical model of disability is still prevalent in the Japanese legal system. For example, it uses the terms “insanity/mentally incompetent” and “mental derangement” to describe persons with mental, intellectual, or developmental disabilities.¹⁸² Revising one provision of the Act to include the social model of disability does not mean the whole legal system is compliant with the CRPD, especially when other medical and derogatory language is still prevalent within it.

One prevalent example of the medical model in practice in Japan is the requirement that persons with disabilities obtain a Disability Certificate in order to receive welfare, disability pensions, and other services.¹⁸³ Critically, the evaluation process for the Disability Certificate is solely conducted from a medical standpoint.¹⁸⁴ For example, someone is only certified as having a hearing disability if they have hearing loss of seventy decibels in Japan, but according

181. Shōgaisha kihonhō [Basic Act for Persons with Disabilities], Law No. 84 of 1970, art. 2 (Japan), *translated in Basic Act for Persons with Disabilities*, JAPANESE L. TRANSLATION, <https://www.japaneselawtranslation.go.jp/en/laws/view/2436> [https://perma.cc/D48Y-5QYP].

182. Derogatory language, such as the term “*shin shin soshitsu*” (insanity), is still used in Japanese law; for example, see Article 26-3, titled “Report of Persons Who Have Caused Serious Harm to Others Under the Condition of Insanity.” Seishin hoken oyobi seishin shōgaisha fukushi ni kansuru hōritsu [Act on Mental Health and Welfare for Persons with Mental Disorders or Disabilities], Law No. 123 of 1950, arts. 24, 26-3 (Japan), *translated in Act on Mental Health and Welfare for Persons with Mental Disorders or Disabilities*, JAPANESE L. TRANSLATION, <https://www.japaneselawtranslation.go.jp/ja/laws/view/4235/tb> [https://perma.cc/QG5H-KV3Z].

183. CRPD, *Concluding Observations on the Initial Report of Japan*, *supra* note 24, ¶ 7.

184. For an example of how Japanese regulations conceive of disability from a purely medical perspective, see *Karada shōgaisha shōgaiteido tōkyūhyō [Physical Disability Severity Grade Table]*, MINISTRY OF HEALTH, LAB. & WELFARE (Japan), <https://www.mhlw.go.jp/file/06-Seisakujouhou-12200000-Shakaiengokyokushougaihokenfukushibu/0000172197.pdf> [https://perma.cc/2ENK-LWL9]. For the degrees and levels of different disabilities based on medical assessment, see *Shintai shōgaisha techō [Physical Disability Certificate]*, MINISTRY OF HEALTH, LAB. & WELFARE (Japan), https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/hukushi_kaigo/shougaihashukushi/shougaihashatechou/index.html [https://perma.cc/KL9K-HRCN].

to the World Health Organization, people with hearing loss of forty-one decibels face difficulties and challenges.¹⁸⁵ Because of Japan's higher threshold, people with hearing loss between forty-one and sixty-nine decibels are not considered disabled under the law and cannot receive the support they need despite experiencing hearing challenges.¹⁸⁶ In its concluding observations to Japan's initial report, the CRPD Committee urged the Japanese government to review and revise the disability qualification and certification system.¹⁸⁷ Under the social model of disability, the evaluation of providing necessary support should not be solely based on medical standards, but on the level of difficulty in the individuals' daily lives.¹⁸⁸

Japanese laws prohibit discrimination based on disability.¹⁸⁹ However, the definition of discrimination based on disability remains

185. Bolajoko O. Olusanya, Adrian Davis & Howard Hoffman, *Hearing Loss Grades and the International Classification of Functioning, Disability and Health*, 97 BULL. WORLD HEALTH ORG. 725, 726–27 (2019) (discussing the standards for hearing disability in table 1).

186. JAPAN DISABILITY F., PARALLEL REPORT FOR JAPAN'S CONCLUDING OBSERVATIONS TO THE COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES 5 (2021), https://jdf-hp.normanet.ne.jp/data/pr/jdf_report_for_the_session_en.pdf [<https://perma.cc/L9QS-6AGC>] (hereinafter JDF, PARALLEL REPORT FOR CRPD CONCLUDING OBSERVATIONS ON JAPAN).

187. CRPD, *Concluding Observations on the Initial Report of Japan*, *supra* note 24, ¶ 7.

188. The total number of persons who have a Disability Certificate in Japan is 7,543,782 as of March 30, 2026. *Shōgaisha techō [Disability Certificate]*, MINISTRY OF HEALTH, LAB. & WELFARE (Japan), https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/hukushi_kaigo/shougaishahukushi/techou.html [<https://perma.cc/YG2A-VRGN>]. This number represents approximately 6.13% of the total population of 122.4 million. For the Japanese population, see *Explore the World Population Through Data*, WORLD POPULATION REV., <https://worldpopulationreview.com> [<https://perma.cc/8RTJ-PC2Z>]. This percentage is significantly lower than the WHO's estimate that 16% of the global population has disabilities. *WHO Disability Facts*, *supra* note 10. Therefore, it may be inferred that some individuals with disabilities in Japan do not meet the medical assessment criteria required to obtain a Disability Certificate and, consequently, do not have access to the services and welfare benefits based on the certificate.

189. See generally, e.g., Shōgai o riyū to suru sabetsu no kaishō no suishin ni kansuru hōritsu [Act for Eliminating Discrimination Against Persons with Disabilities], Law No. 65 of June 26, 2013 (Japan), *translated in Act for Eliminating Discrimination Against Persons with Disabilities*, JAPANESE L. TRANSLATION, <https://www.japaneselawtranslation.go.jp/en/laws/view/3052> [<https://perma.cc/P9NS-AK2T>] (establishing multiple protections designed to eliminate discrimination against persons with disabilities).

vague despite Japan's ratification of the CRPD. Article 5 of the treaty prohibits all forms of discrimination based on disability, including direct discrimination and indirect discrimination.¹⁹⁰ According to the CRPD Committee, "direct discrimination occurs when, in a similar situation, persons with disabilities are treated less favorably than other persons because of a different personal status in a similar situation for a reason related to a prohibited ground."¹⁹¹ "[I]ndirect discrimination," by contrast, "means that laws, policies or practices appear neutral at face value but have a disproportionate negative impact on a person with a disability."¹⁹² Indirect discrimination can also occur against persons who have a relative or associate with disabilities, such as a parent.¹⁹³ Although it has passed laws concerning direct discrimination, the Japanese legal system makes no mention of prohibiting indirect discrimination.¹⁹⁴ Moreover, it seems that Japanese disability laws only protect persons who currently have disabilities.¹⁹⁵ But according to the CRPD, discrimination based on disability extends to discrimination against "persons who have had a disability in the past, who have a disposition to disability that lies in the future, who are presumed to have a disability, and those who are associated with a person with a disability."¹⁹⁶ Therefore, these Japanese laws' definition of discrimination on the basis of disability does not comply with Article 5 of the CRPD.

Article 4 of the Japanese Disability Basic Act states that "[n]o person may commit an act of discrimination . . . against a person with a disability on the basis of the disability" and provides that "[w]hen a person with a disability currently requires the removal of a social barrier . . . , necessary and reasonable accommodation must be given"¹⁹⁷ While Article 4 implies the existence of discrimination

190. CRPD, General Comment No. 6, *supra* note 24, ¶ 18.

191. *Id.*

192. *Id.*

193. *Id.* ¶ 20.

194. Tamako Hasegawa, *Reasonable Accommodation for Persons with Disabilities in Japan*, 12 JAPAN LAB. REV. 21, 24 (2015).

195. JDF, PARALLEL REPORT FOR CRPD CONCLUDING OBSERVATIONS ON JAPAN, *supra* note 186, at 8.

196. CRPD, General Comment No. 6, *supra* note 24, ¶ 20.

197. Shōgaisha kihonhō [Basic Act for Persons with Disabilities], Law No. 84 of 1970, art. 4 (Japan), *translated in Basic Act for Persons with Disabilities, JAPANESE* L. TRANSLATION,

<https://www.japaneselawtranslation.go.jp/en/laws/view/2436>

[<https://perma.cc/D48Y-5QYP>]. Article 4 provides in relevant part that:

based on disability, it does not clearly state that refusing to provide reasonable accommodation constitutes such discrimination. Meanwhile, Article 7 of the Act for Eliminating Discrimination Based on Disability clarifies that local governments bear the burden of providing reasonable accommodations to remove social barriers.¹⁹⁸ While Article 7 implies that administrative organs' denial of reasonable accommodations constitutes discrimination, without a clear and straightforward definition, one needs to explain and interpret both Article 4 and Article 7 as implying such a definition—in other words, a comprehensive definition does not exist in a single source. Consequently, the Japanese judicial system has the power to decide what constitutes discrimination based on disability.

Unfortunately, in the first Japanese case regarding reasonable accommodation in school settings, the court failed to recognize the denial of reasonable accommodations in a public school as discrimination.¹⁹⁹ In that case, the Nagoya District Court ruled that Article 7(2) of the Act for Eliminating Discrimination Based on Disability “is not a provision intended to grant the right to request reasonable consideration to individual persons with disabilities.”²⁰⁰ The District Court held that the school's refusal to provide reasonable accommodations—in this case, sputum suction equipment—was legal; the Nagoya High Court affirmed the decision.²⁰¹ In light of this case,

(1) No person may commit an act of discrimination or any other act which violates interests or rights against a person with a disability on the basis of the disability.

(2) When a person with a disability currently requires the removal of a social barrier and if the burden associated with said implementation is not excessive, necessary and reasonable accommodation must be given to implementing the removal of the social barrier so as not to be in violation of the provisions of the preceding paragraph by denial to do so.

Id.

198. Shōgai o riyū to suru sabetsu no kaishō no suishin ni kansuru hōritsu [Act for Eliminating Discrimination Against Persons with Disabilities], Law No. 65 of June 26, 2013 (Japan), art. 7, *translated in Act for Eliminating Discrimination Against Persons with Disabilities*, JAPANESE L. TRANSLATION, <https://www.japaneselawtranslation.go.jp/en/laws/view/3052> [<https://perma.cc/P9NS-AK2T>].

199. Munehisa Yoshitoshi, Goro Horiguchi, & Kiriko Takahashi, *Judicial Barriers to Inclusive Education as a Human Right: An Analysis of Relevant Legal Cases in Japan*, 39 *DISABILITY & SOC'Y* 1423, 1436 (2024).

200. *Id.* at 1437; Nagoya Chihō Saibansho Minji [Nagoya Dist. Ct.] Aug. 19, 2020, Heisei 30 (gyō u) no. 79, *SHOBUN GIMUZUKE-TO SEIKYUU JIKEN* 1, 1 (Japan) (on file with the *Columbia Human Rights Law Review*).

201. Yoshitoshi et al., *supra* note 199, at 1437.

it seems persons with disabilities do not have a right to reasonable accommodation under the Act for Eliminating Discrimination Based on Disability and therefore that the failure to provide reasonable accommodation does not constitute discrimination based on disability in the eyes of Japanese courts.

Another concern is how the court understands “reasonable accommodation.” In its final judgment, the Nagoya High Court reasoned that the parents’ requested accommodations were unreasonable because, *inter alia*, “the device would be only personally used by the student with disabilities.”²⁰² However, reasonable accommodations must be based on the individual’s needs; whether other people will use the accommodation is not a legitimate basis for denial according to the CRPD.²⁰³ The Nagoya High Court judges, based on the vague wording of the relevant Japanese legal provisions,²⁰⁴ misinterpreted the justifications for rejecting reasonable accommodations and instead rejected them based on their intended recipient.

Moreover, the Nagoya High Court focused on analyzing the parents’ obligation to provide education to their disabled children, such that the financial responsibility fell on the parents rather than the school.²⁰⁵ The Court emphasized the financial and human burden imposed on the school by enrolling students with disabilities, thereby failing to recognize that “reasonable accommodation is mandatory to guarantee the ‘right to education’ of children.”²⁰⁶ The CRPD Committee has expressed concern about the definitional issues regarding discrimination based on disability, suggesting that the Japanese government clearly recognize denial of reasonable

202. *Id.*; Nagoya Kōsai [Nagoya High Ct.] Sept. 3, 2021, Reiwa 2 (gyō ko) no. 41, WESTLAW JAPAN [WLJP], 2021WLJPCA09036005, 1, 7 (Japan) (on file with the *Columbia Human Rights Law Review*).

203. CRPD, General Comment No. 6, *supra* note 24, ¶ 27(b) (“[T]he reasonable accommodations provided only benefit the applicant(s).”).

204. Shōgaisha kihonhō [Basic Act for Persons with Disabilities], Law No. 84 of 1970, art. 4, (Japan), *translated in Basic Act for Persons with Disabilities*, JAPANESE L. TRANSLATION, <https://www.japaneselawtranslation.go.jp/en/laws/view/2436> [https://perma.cc/D48Y-5QYP]; *see also supra* note 199 and accompanying text (discussing the first Japanese court case on the issue of reasonable accommodation).

205. Yoshitoshi et al., *supra* note 199, at 1437; Nagoya Kōsai, Sept. 3, 2021, Reiwa 2 (gyō ko) no. 41, WLJP at 7.

206. Yoshitoshi et al., *supra* note 199, at 1437.

accommodations as a form of discrimination based on disability.²⁰⁷ So, while Japan has recognized social barriers as the cause of disability, its prevalent derogatory language around disability, lack of a clear definition of discrimination based on disability, and its courts' analysis of reasonable accommodation nevertheless represents noncompliance with the CRPD.

3. Korea

Like China, Korea also implements a pure medical model of disability. Article 2(1) of the Korean Act on the Prohibition of Discrimination Against Persons with Disabilities and Remedy Against Infringement of Their Rights defines disability as “physical or mental impairment or loss of function that substantially limits an individual’s personal or social activities for an extended period of time.”²⁰⁸ Article 2 of Korea’s Welfare Law for Persons with Disabilities affirms this purely medical-based definition of disability, defining physical disability as “a disability of principal external bodily functions and of internal organs,” and mental disability as “disability caused by psychological development disorder or mental disease.”²⁰⁹ These definitions reflect the Korean government’s pure medical and individual understanding of disability, and associated failure to recognize social factors as the cause of disability. Moreover, Article 9(1) of the Korean Disability Welfare Act even clarifies that “the State and local governments shall be held responsible for the prevention of disability from occurring.”²¹⁰ By intimating that disabilities can be “prevented” from occurring, this expression clearly

207. CRPD, *Concluding Observations on the Initial Report of Japan*, *supra* note 24, ¶¶ 13–14.

208. Act on the Prohibition of Discrimination Against Persons with Disabilities and Remedy Against Infringement of Their Rights (Disability Discrimination Prohibition Act), art. 2 para. 1 (S. Kor.), *translated in* Korean Legislation Research Institute’s online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=55535&lang=ENG [<https://perma.cc/P9ZR-2KP9>].

209. Act on Welfare of Persons with Disabilities (Disability Welfare Act), art. 2 para. 2 subparas. 1–2 (S. Kor.), *translated in* Korean Legislation Research Institute’s online database, https://elaw.klri.re.kr/eng_service/main.do [<https://perma.cc/5HDZ-L7NM>] (search required).

210. *Id.* art. 9 para. 1.

does not follow Article 3(d) of CRPD, which requires States Parties to recognize disability as part of human diversity and humanity.²¹¹

While the Korean National Human Rights Commission Act recognizes social cause of disability by stating that “[t]he term ‘disability’ means the condition where one is hampered by substantial restriction in the daily life or social activity for a long time due to physical, spiritual or social factor,”²¹² all other laws that specifically focus on disability still understand disability as an individual’s deficiencies.²¹³ The dominant definition of disability still reflects the medical model, about which the CRPD Committee has expressed significant concerns.²¹⁴ To receive welfare services, persons with disabilities must register with the local government and get a disability registration certificate based on disability classifications.²¹⁵ Services that persons with disabilities can receive purely depend on the type and degree of their disability,²¹⁶ which neglects the unique needs of each person with disabilities. In addition, persons with mental or psychosocial disabilities are excluded from the Korean Disability Welfare Act, and are instead governed by separate laws and policies, which has raised concerns from the CRPD Committee.²¹⁷ In short, as the CRPD Committee concluded, the medical model of disability is still prevalent in the Korean legal system.²¹⁸

Compared to China and Japan, Korea has the most CRPD-compliant definitions of reasonable accommodations and discrimination based on disability. Article 4, paragraph 2 of the Korean Disability Discrimination Prohibition Act defines reasonable accommodations as “any or all human and material arrangements and measures that will lead persons with disabilities to participate in

211. “The principles of the present Convention shall be: . . . [r]espect for difference and acceptance of persons with disabilities as part of human diversity and humanity . . .” CRPD art. 3(d), *supra* note 8.

212. National Human Rights Commission Act, art. 2 para. 7 (S. Kor.), translated in Korean Legislation’s Research Institute’s online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=60182&lang=ENG [<https://perma.cc/4E8D-LKKV>].

213. See *supra* notes 208–209 and accompanying text (discussing Korean disability laws).

214. CRPD, *Concluding Observations on the Combined Second and Third Periodic Reports of Korea*, *supra* note 24, ¶ 5(b).

215. Disability Welfare Act, art. 32 para. 1.

216. *Id.* art. 35.

217. *Id.* art. 15; CRPD, *Concluding Observations on the Combined Second and Third Periodic Reports of Korea*, *supra* note 24, ¶ 8.

218. CRPD, *Concluding Observations on the Combined Second and Third Periodic Reports of Korea*, *supra* note 24, ¶ 5(b).

activities on an equal basis with persons without disabilities”²¹⁹ This definition is very close to the CRPD standards, recognizing reasonable accommodations as vehicles for persons with disabilities to achieve equality.²²⁰ In addition, Korean laws are very clear that denial of reasonable accommodations is a form of discrimination based on disability.²²¹ The Act not only prohibits direct discrimination but also indirect discrimination (i.e., facially-neutral policies that have a disparate impact on persons with disabilities).²²² Furthermore, Article 6 of the Act also prohibits discrimination based on current disability, previous disability, or presumed disability.²²³ While this prohibition does not specifically include discrimination based on future disability, it provides broader protection than do similar laws in China and Japan.

Notably, Articles 4, 5, and 6 of the Korean Disability Discrimination Prohibition Act were drafted and passed by the government *before* Korea signed the CRPD, during its domestic disability rights movement.²²⁴ It modeled the Act after the 1990

219. Act on the Prohibition of Discrimination Against Persons with Disabilities and Remedy Against Infringement of Their Rights (Disability Discrimination Prohibition Act), art. 4 para. 2 (S. Kor.), *translated in* Korean Legislation Research Institute’s online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=55535&lang=ENG [https://perma.cc/P9ZR-2KP9].

220. CRPD art. 2, *supra* note 8.

221. Disability Discrimination Prohibition Act, art. 4 para. 1 subpara. 3.

222. *Id.* art. 4 para. 1.

223. *Id.* art. 6.

224. The Korean Disability Discrimination Prohibition Act was passed on April 10, 2007, and South Korea ratified the CRPD in December 2008. *CRPD Ratification Status*, *supra* note 13. In this Article, I define disability rights movements generally as broad, bottom-up efforts advocating for the right to reasonable accommodation and modification to achieve substantive equality in every aspect of social life. A typical example is the disability rights movement in the United States between the 1970s and the 1990s. As discussed *supra* Section I.A., the social model of disability is the driving force behind such movements. Therefore, I argue that disability rights movements can theoretically challenge traditional Confucian elitism and ableist cultures in at least two ways. First, they reject societal norms, including legal provisions, that depict persons with disabilities as objects of pity, instead recognizing them as rights holders equal to non-disabled people. Second, they propose and mobilize the right to reasonable accommodations—an indispensable vehicle for achieving substantive equality, which uniquely applies to persons with disabilities. However, it remains unclear whether and how disability rights movements and legal reforms meaningfully empower persons with disabilities in their everyday lives in China, Japan, and South Korea without robust empirical studies. For a more detailed discussion of the disability rights movements in Japan and South Korea, see Celeste Arrington

Americans with Disabilities Act (ADA).²²⁵ While the social movement advocating for anti-discrimination based on disability and the negotiation and ratification of the CRPD occurred around the same time, disability rights activists decided to work on passing the law before entering another presidential election year.²²⁶ Therefore, although Korea complies with Article 5 of the CRPD, one cannot say its compliance was motivated by the CRPD.²²⁷ This supports the argument that compliance and effectiveness are distinct concepts.

In conclusion, the dominant understanding of disability in China, Japan, and Korea still heavily relies on the medical model of disability, which conflicts with the CRPD's Article 1 requirement that State Parties understand disability as a social construction and part of human diversity. The view that disability is purely an individual and medical issue is deeply rooted in Confucian culture.²²⁸ Because of such a medical model understanding, China does not have definitions of discrimination based on disability or reasonable accommodations and Japan has not yet recognized that denial of reasonable accommodations is a form of discrimination based on disability. While Korea does recognize denial of reasonable accommodations as a form of disability-based discrimination, that recognition is more likely a result of the domestic disability rights movement inspired by the 1990 ADA rather than the CRPD itself. Yet despite these differences, the use of the medical model of disability causes these countries to fail to comply with Article 24 of the CRPD, as discussed in the next Section.

& Yong-il Moon, *Cause Lawyering and Movement Tactics: Disability Rights Movements in South Korea and Japan*, 42 LAW & POL. 5 (2019). It seems that there has never been a comparable disability rights movement in China.

225. JaeWon Kim, *From Invisible Beneficiaries to Independent Rights Holders: How the Disability Rights Movement Changed Korea's Law and Society*, 19 J. KOREAN L. 149, 170 (2020) [hereinafter Kim, *Disability Rights in Korea*].

226. *Id.*

227. The U.N. General Assembly unanimously adopted the CRPD in December 2006. G.A. Res. 61/106 (Jan. 24, 2007). The National Assembly of Korea passed the Act on Prohibition of Discrimination based on Disability on March 6, 2007, *South Korea: Disability Anti-Discrimination Act Adopted by the National Assembly*, HURIGHTS OSAKA (Apr. 3, 2007), <https://www.hurights.or.jp/archives/newsinbrief-en/section2/2007/04/south-korea-disability-anti-discrimination-act-adopted-by-the-national-assembly.html> [https://perma.cc/49CP-SPG3], and the Korean government ratified the CRPD in December 2008, *CRPD Ratification Status*, *supra* note 13.

228. *See supra* Part III (discussing major barriers to disability rights in East Asia).

B. Inclusive Education as a Symbol in Laws

China, Japan, and Korea have taken different approaches to integrating the concept of “inclusive education” in their domestic legal systems. China uses the exact term “inclusive education” in its legal system, while Korea uses “integrated education.”²²⁹ Japan does not have any specific term that reflects inclusive education in its legal system.²³⁰ Even so, this Section argues that, regardless of the terms used by these governments, inclusive education often serves a symbolic purpose rather than a genuinely practical purpose, in contravention to Article 24 of the CRPD.

1. China

The only provision that mentions “inclusive education” in the Chinese legal system is Article 3 of the 2017 Chinese Education Regulation, which was intended to fulfill Article 24 of the CRPD.²³¹ It states that “inclusive education should be actively promoted.”²³² However, the 2017 Chinese Education Regulation has many (perhaps

229. *Compare* Canji Ren Jiaoyu Tiaoli (残疾人教育条例) [Regulation on Education for Persons with Disabilities] (promulgated by the St. Council, Jan. 11, 2017, effective May 1, 2017), art. 3 (China), https://www.gov.cn/zhengce/content/2017-02/23/content_5170264.htm [<https://perma.cc/NPD6-R5PK>] (“Education for people with disabilities should improve its quality, actively promote inclusive education, and adopt either general education or special education methods based on the type of disability and the ability of the person to learn, with priority given to general education.”), *with* Act on Special Education for Persons with Disabilities, amended by Act No. 18992, Oct. 18, 2022, art. 2 para. 6 (S. Kor.), translated in Korean Legislation’s Research Institute’s online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=61383&lang=ENG [<https://perma.cc/TDH8-3974>] (“The term ‘integrated education’ means education provided for persons eligible for special education in a regular school with other persons of the same age which is suitable for the educational needs of each individual without any discrimination according to the type and level of disability.”).

230. For a relevant example of a statutory authority that lacks any reference to “inclusive education,” see Shōgaisha kihonhō [Basic Act for Persons with Disabilities], Law No. 84 of 1970, (Japan), translated in *Basic Act for Persons with Disabilities*, JAPANESE L. TRANSLATION, <https://www.japaneselawtranslation.go.jp/en/laws/view/2436> [<https://perma.cc/D48Y-5QYP>].

231. People’s Republic of China, *Combined Second and Third Periodic Reports Submitted by China Under Article 35 of the Convention on Rights of Persons with Disabilities*, ¶ 84, U.N. Doc. CRPD/C/CHN/2-3 (June 19, 2019) [hereinafter *China’s Combined Second and Third Periodic Reports*].

232. 2017 Regulation on Education for Persons with Disabilities, art. 3.

fatal) ambiguities that result in a failure of compliance with Article 24 of the CRPD.

First, inclusive education is not actually defined until Article 58, the penultimate article of the Regulation, which states that “inclusive education refers to the integration of education for students with disabilities into ordinary education to the greatest extent possible.”²³³ In comparison to the definition of inclusive education set forth in CRPD General Comment No. 4,²³⁴ the definition of inclusive education in the 2017 Education Regulation is too vague. Without clear and actionable guidelines on how to effectively educate students with disabilities alongside non-disabled peers in mainstream settings, the definition of inclusive education lacks substantial difference from China’s policy of Learning in Regular Classrooms.²³⁵

Learning in Regular Classrooms was a practice that emerged in the 1950s in China to increase the enrollment of students with disabilities in schools.²³⁶ While some scholars label Learning in

233. *Id.* art. 58.

234. CRPD, General Comment No. 4, *supra* note 23, ¶¶ 10–11.

235. Learning in Regular Classrooms is translated from *Suiban jiaodu*: “*Sui*” means “following,” “*ban*” means “regular classroom,” and “*jiudu*” means “learning.” Helen McCabe & Tian Jiang, *Inclusive Education in China: From Policy to Implementation to On the Ground Experiences*, 18 REV. DISABILITY STUD. 1, 4 (2024). Before China ratified the CRPD, Chinese scholars intensely debated whether inclusive education—a Western practice based on the civil rights movement—was suitable for China’s educational situation. See Deng & Poon-McBrayer, *Inclusive Education*, *supra* note 21, at 118–19 (providing a history of the debates surrounding special education in China). Many contended that inclusive education did not fit China’s reality: too many students with disabilities and too limited education resources. Instead, they supported Learning in Regular Classrooms, a more feasible form of education for the Chinese context, with some scholars even arguing that Learning in Regular Classrooms was equivalent to inclusive education but with Chinese characteristics. See Meng Deng & Xinhua Zhu, *Special Education Reform Towards Inclusive Education: Blurring or Expanding Boundaries of Special and Regular Education in China*, 16 J. RSCH. SPECIAL EDUC. NEEDS 994, 995–96 (2016) [hereinafter Deng & Zhu, *Towards Inclusive Education*] (discussing the ongoing conflicts between special and regular education in China); WANGQIAN FU, INCLUSIVE EDUCATION IN CHINA: IDEAS, PRACTICES, AND CHALLENGES 8 (2022) (arguing that Learning in Regular Classrooms “will eventually evolve into a true inclusive education”); Xu & Wu, *supra* note 21, at 548–49 (discussing China’s two-phase special education promotion plan); Zhe Gigi An, Xiaoyi Hu, & Eva Horn, *Chinese Inclusive Education: The Past, Present, and Future*, 54 INTERVENTION SCH. & CLINIC 118, 118 (2018) (discussing the evolution of Learning in Regular Classrooms into a form of inclusive education).

236. Deng & Poon-McBrayer, *Inclusive Education*, *supra* note 21, at 118–19; Xu & Wu, *supra* note 21, at 549.

Regular Classrooms as “Inclusive Education with Chinese Characteristics,” in reality it involves a totally different, unsupportive educational approach for students with disabilities.²³⁷ Under Learning in Regular Classrooms, students with disabilities must adapt themselves to mainstream school environments without legally-guaranteed reasonable accommodations, which are firmly mandated by Article 24 of the CRPD on inclusive education.²³⁸ Based on the CRPD Committee’s explanation of Article 24 provided in General Comment No. 4, Learning in Regular Classrooms at best equates to integrated education, but is far inferior to inclusive education.²³⁹

As it stands, the definition of inclusive education in Article 58 is virtually indistinguishable from Learning in Regular Classrooms and, as such, it fails to meaningfully meet the standard of inclusive education. Inclusive education focuses on the ability of all children to learn together wherever possible, regardless of any difficulties or differences they may have, and with reasonable accommodations or modifications provided as needed.²⁴⁰ However, the definition of inclusive education in China’s Article 58 does not mention reasonable accommodations or modifications based on students’ differences; it merely says, “inclusive education refers to integrating the education of students with disabilities into ordinary education to the greatest

237. For example, at the admission stage, “Learning in Regular Classrooms” evaluates a student with disabilities’ physical and mental conditions to decide if they can join a regular school, rather than automatically enrolling all students with disabilities in their neighborhood schools. Su Qiong Xu, Paul Cooper, & Kenneth Sin, *The ‘Learning in Regular Classrooms’ Initiative for Inclusive Education in China*, 22 INT’L J. INCLUSIVE EDUC. 54, 59–60 (2018). If students with disabilities are fortunate enough to pass the examination to enroll, “Learning in Regular Classrooms” does not offer any reasonable accommodations or modifications; students with disabilities are expected to adapt to classes and extracurricular activities solely designed for non-disabled students. *Id.* at 61. Additionally, there are no special segregated neighborhood schools for students with disabilities, since special schools are usually boarding schools. See Deng & Zhu, *Towards Inclusive Education*, *supra* note 235, at 995 (discussing the expansion of Learning in Regular Classrooms in China).

238. CRPD art. 24, *supra* note 8; CRPD, General Comment No. 4, *supra* note 23, ¶ 12.

239. See CRPD, General Comment No. 4, *supra* note 23, ¶¶ 11–12 (distinguishing inclusive education from integration and defining the latter as “a process of placing persons with disabilities in existing mainstream educational institutions, as long as the former can adjust to the standardized requirements of such institutions”).

240. Theoretically, students with or without disabilities are all the beneficiaries of inclusive education. *The Salamanca Statement*, *supra* note 60, ¶ 7.

extent possible.”²⁴¹ The vagueness of “the greatest extent” language undermines the purpose and enforceability of the law’s mandate to “actively promote inclusive education.”²⁴²

Further, bringing students with disabilities into mainstream schools and classrooms without any reasonable accommodations will not promote inclusive education. But the only article in the 2017 Education Regulation that mentions reasonable accommodation is Article 52, which is limited to the situation when persons with disabilities take national examinations.²⁴³ Thus, students’ right to reasonable accommodations in a non-national examination setting is not guaranteed by the Chinese legal system. Again, like with “discrimination,” the 2017 Education Regulation does not provide the definition of reasonable accommodation, which may prevent disabled students from enforcing their right to inclusive education under the CRPD.²⁴⁴ While the law prohibits educational discrimination based on disability,²⁴⁵ it is difficult for students with disabilities and their family members to challenge schools’ and education departments’ decisions as discriminatory because of a lack of definitions for such significant concepts.

While the Chinese government has stated that it will promote inclusive education,²⁴⁶ it continues to prioritize segregated special education as its preferred educational approach. Since 2014, the Chinese government has issued a National Education Plan for persons with disabilities every five years; the last plan spanned from 2021 to 2025, which is after China committed to inclusive education by adopting the CRPD.²⁴⁷ However, that plan continued to emphasize

241. Canji Ren Jiaoyu Tiaoli (残疾人教育条例) [Regulation on Education for Persons with Disabilities] (promulgated by the St. Council, Jan. 11, 2017, effective May 1, 2017), art. 58 (China), https://www.gov.cn/zhengce/content/2017-02/23/content_5170264.htm [<https://perma.cc/NPD6-R5PK>].

242. *Id.* art. 3.

243. *Id.* art. 52 (“Disabled people who participate in national education examinations and require necessary support conditions and reasonable accommodations can apply for them. Educational examination institutions and schools should provide these in accordance with relevant national regulations.”).

244. CRPD art. 2, *supra* note 8 (“‘Reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms . . .”).

245. 2017 Regulation on Education for Persons with Disabilities, art. 2.

246. *Id.* art. 3.

247. Shisi Wu Teshu Jiaoyu Fazhan Tisheng Xingdong Jihua (“十四五”特殊教育发展提升行动计划) [Action Plan for the Development and Improvement of

“special education” and the construction of special schools to segregate students with disabilities.²⁴⁸ None of the policies actually guarantee students with disabilities the right to reasonable accommodations in everyday school life, which is indispensable for true inclusive education.²⁴⁹ For example, the term “reasonable accommodation” cannot be found in the 2021–2025 education plan for students with disabilities.²⁵⁰ In provisions that mention the term “inclusive education,” no specific or practical measures to achieve inclusive education are identified since there is no recognized right to reasonable accommodations.²⁵¹

In summary, although Chinese law mentions promoting “inclusive education,” it lacks a clear CRPD-compliant definition and a systematic plan to reallocate resources from special segregated education to inclusive education. As a result, the number of segregated special education schools and the number of students with disabilities in segregated educational environments, including special classes within mainstream schools, has increased.²⁵² Therefore, China has failed to comply with Articles 1 and 24 of the CRPD.

Special Education During the 14th Five-Year Plan] (promulgated by Ministry of Educ., Nat’l Dev. & Reform Comm’n, Ministry of Civ. Affs., Ministry of Fin., Ministry of Hum. Res. & Soc. Sec., Nat’l Health Comm’n, China Disabled Persons’ Fed’n, Dec. 31, 2021) (China), http://www.moe.gov.cn/jyb_xgk/moe_1777/moe_1778/202201/t20220125_596312.html [<https://perma.cc/6348-U2U2>]. As of the publication of this Article, the next round of five-year plans relating to disability and education had not been released.

248. *Id.* ¶¶ 4–5.

249. *See id.* ¶¶ 6–7 (providing no mention of rights to reasonable accommodations in everyday school life).

250. *Id.* ¶¶ 5, 7. For example, paragraph 7 states:

Explore an inclusive education model that facilitates the joint development of children with disabilities and non-disabled children. Promote partnerships between special education schools and regular schools to support and build inclusive education systems, encourage group-based inclusive schooling, create an inclusive educational environment, and foster the integration of children with disabilities and non-disabled children.

Id. ¶ 7. The right to reasonable accommodations in everyday school was not mentioned at all.

251. *Id.* ¶¶ 5–6. As discussed *supra* notes 73–77 and the accompanying text, inclusive education is not possible without reasonable accommodations.

252. The number of students with disabilities attending segregated special schools increased from 440,000 in 2015 to 880,000 in 2020, while the number of students with disabilities attending mainstream schools grew from 239,000 in

2. Japan

Inclusive education has not yet been mentioned in the fundamental Japanese laws for persons with disabilities or education. In 2007, the government changed “Special Education” to “Special Needs Education” in the School Education Act.²⁵³ However, this revision did not reflect a shift in focus from segregated education to inclusive education. Article 16 of the Japanese Disability Basic Act requires the national and local governments to provide “accommodation to children and students with disabilities being able to receive their education together with children and students without disabilities insofar as possible.”²⁵⁴ There are two flaws in this provision. First, it only requires that the government provide accommodations, rather than reasonable accommodations, which has a specific legal meaning in Article 4, paragraph 2 of the Japanese Disability Basic Act and Article 2 of the CRPD.²⁵⁵ Second, the restrictive phrase “insofar as possible” is vague and does not provide clear guidelines on when students with disabilities should stay in

2015 to 439,000 in 2020. Mei Ou (记者 欧媚), *Woguo Canji Ertong Yiwu Jiaoyu Ruxue Lu Chaoguo 95%* (我国残疾儿童义务教育入学率超95%) [*The Enrollment Rate of Children with Disabilities in Compulsory Education in Our Country Exceeds 95%*], CHINA ONLINE EDUC. CHANNEL (Sept. 28, 2021) (China), http://edu.china.com.cn/2021-09/28/content_77778362.htm (last visited July 29, 2024) (on file with the *Columbia Human Rights Law Review*).

253. Yoshitoshi et al., *supra* note 199, at 1424.

254. Shōgaisha kihonhō [Basic Act for Persons with Disabilities], Law No. 84 of 1970, art. 16, para. 1, (Japan), *translated in Basic Act for Persons with Disabilities*, JAPANESE L. TRANSLATION, <https://www.japaneselawtranslation.go.jp/en/laws/view/2436> [<https://perma.cc/D48Y-5QYP>].

255. In the Japanese Basic Act for Persons with Disabilities, Article 4-2 specifically uses the term “reasonable accommodation” (合理的配慮). *Id.* art. 4-2. However, Article 16, which addresses education, only uses the term “accommodation” (配慮). *Id.* art. 16. “Reasonable accommodation” and “accommodation” are different concepts because the former has a specific legal meaning as set forth in Article 2 of the CRPD. CRPD art. 2, *supra* note 8. The Japanese translation of the CRPD, as published on the official website of the Ministry of Foreign Affairs of Japan, also uses the term “reasonable accommodation” (合理的配慮), not merely “accommodation” (配慮). For the Japanese version of the CRPD, see *Shōgaisha no kenri ni kansuru jōyaku [Convention on the Rights of Persons with Disabilities]*, MINISTRY OF FOREIGN AFFS. OF JAPAN (Jan. 30, 2014) (Japan), https://www.mofa.go.jp/mofaj/fp/hr_ha/page22_000899.html [<https://perma.cc/GRC3-3L6Z>].

Therefore, these legal provisions suggest that the usage of “accommodations” without the “reasonable” modifier is intentional and meaningful.

mainstream classrooms;²⁵⁶ this ambiguity will negatively impact the implementation of inclusive education.

While theoretically Article 4 of the Japanese Disability Basic Act and Article 7 of the Japanese Act for Eliminating Disability Discrimination should apply to local governments and require them to provide reasonable accommodations, the interpretation of the law in the Nagoya District Court case does not support such an interpretation.²⁵⁷ Therefore, it seems that under Japanese law, students with disabilities do not have a right to reasonable accommodations in mainstream classrooms, making their true inclusion difficult.

In addition, several provisions of Japanese law promote segregated special education for students with disabilities. For instance, Article 81, paragraph 2 of the Japanese School Education Act specifically allows schools to build special needs education classrooms in mainstream schools based on types of disabilities, including physical disabilities.²⁵⁸ The 2022 Ministerial Notification stipulates that students in special education classes should not spend more than half of their school time in mainstream classes.²⁵⁹ Similarly, Article 80 of the School Education Act requires that “prefectures must establish special needs education schools,”²⁶⁰ but there is no requirement to promote inclusive education. These forms of education, which are supported and required by Japanese laws, constitute segregation pursuant to General Comment No. 4.²⁶¹

Somewhat paradoxically, more students with disabilities have received education in a segregated environment since Japan ratified the CRPD.²⁶² For example, the number of students in segregated special needs schools in May 2016 was 1.3 times greater than in 2005, and the number of students in segregated special needs classes was

256. Basic Act for Persons with Disabilities, art. 16, para. 1.

257. See *supra* notes 199–200 and accompanying text (discussing the first Japanese court case concerning the meaning of reasonable accommodation).

258. Gakkō kyōiku hō [School Education Act], Law No. 26 of 1947, art. 81, para. 2 (Japan), *translated in School Education Act (Tentative Version)*, JAPANESE L. TRANSLATION, https://www.japaneselawtranslation.go.jp/en/laws/view/4573#je_ch9at10 [https://perma.cc/8Q3G-TU83].

259. CRPD, *Concluding Observations on the Initial Report of Japan*, *supra* note 24, ¶ 51(b).

260. School Education Act, art. 80.

261. CRPD, General Comment No. 4, *supra* note 23, ¶ 11.

262. JDF, PARALLEL REPORT FOR CRPD CONCLUDING OBSERVATIONS ON JAPAN, *supra* note 186, at 36.

2.3 times greater.²⁶³ Furthermore, whereas Article 24 of the CRPD requires States Parties to implement inclusive education at all levels of education,²⁶⁴ in Japan, students with disabilities who wish to enroll in kindergarten or upper secondary schools have only two options: segregated special schools or mainstream classes.²⁶⁵ Without a recognized right to reasonable accommodations, it is difficult to have CRPD-compliant inclusive education for these students in mainstream classrooms.

It should therefore come as no surprise that the CRPD Committee has critiqued how Japan's "perpetuation of segregated education" and "insufficient provision of reasonable accommodation" make "education in regular environments inaccessible for children with disabilities, especially for children with intellectual and/or psychosocial disabilities[.]"²⁶⁶

3. Korea

Korea does not use the term "inclusive education" but does refer to "integrated education" in its legal system.²⁶⁷ Under Korean law, "integrated education" is defined as "education provided for persons eligible for special education in a regular school with other persons of the same age which is suitable for the educational needs of each individual without any discrimination according to the type and level of disability."²⁶⁸ Provided that denial of reasonable accommodation is a form of discrimination based on disability, Korea's definition of integrated education is closer to the standards of

263. The total number of children in compulsory education has been decreasing, with a total of around 9.99 million as of May 2016. *Id.* Of that number, 71,000 children (0.71%) attended special needs schools (1.3 times more than in 2005); 218,000 children (2.18%) were in special needs classes (2.3 times more than in 2005); and 98,000 children (0.98%) receive special support in regular classes (2.3 times more than in 2005). *Id.*

264. CRPD art. 24, ¶ 1, *supra* note 8.

265. Yoriko Kikkawa et al., *Inclusive Educational System and Practice in Japan*, in *THE INCLUSION FOR STUDENTS WITH SPECIAL EDUCATIONAL NEEDS ACROSS THE ASIA PACIFIC: THE CHANGING LANDSCAPE* 133, 133 (Wendi Beamish & Mantak Yuen eds., 2022).

266. CRPD, *Concluding Observations on the Initial Report of Japan*, *supra* note 24, ¶ 51(a), (c).

267. Act on Special Education for Persons with Disabilities (Special Education Act), *amended by* Act No. 18992, Oct. 18, 2022, art. 2 (S. Kor.), *translated in* Korean Legislation's Research Institute's online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=61383&lang=ENG [<https://perma.cc/TDH8-3974>].

268. *Id.* art. 2 para. 5.

inclusive education in General Comment No. 4 compared to China and Japan.²⁶⁹ However, it still has limitations. First, Korea's definition of integrated education only deals with "regular school" settings, leaving room for segregated education for students with disabilities in separate educational facilities.²⁷⁰ In fact, Article 21, paragraph 3 of the Korean Special Education Act even mandates head teachers at schools to "install and operate a special class" to follow the principles and standards of integrated education.²⁷¹ While Article 21 requires schools to provide "a comprehensive plan for education, which includes the adjustment of curriculum, support of assistants, support of learning assistive devices, and training of teachers,"²⁷² it seems such support mechanisms are implemented outside of mainstream classrooms, given the mandate to establish special classes.²⁷³ Therefore, the Korean Special Education Act's understanding of ideal and supportive education for students with disabilities is still based on segregation.

Another concern is the pure medical-based assessment of the form of education that a student with disabilities should receive. According to Article 17 of the Korean Special Education Act, after a special education support center assesses the type and degree of a student's disability, they are to decide between the following forms of education: (1) "[r]egular classes at a regular school," (2) "[s]pecial classes at a regular school," and (3) [s]pecial schools."²⁷⁴ There is no requirement to place students with disabilities in a truly inclusive environment: mainstream classes with reasonable accommodations. In addition, Article 16, paragraph 4 vaguely states that parents are guaranteed the opportunity to state their opinions in the process of diagnosing and evaluating their child's type and degree of disability, but it does not clarify the procedure to resolve disputes between parents and medical professionals.²⁷⁵ Moreover, this right for parents to provide their opinion does not extend to the form of education their child should receive, and as such, there is no dispute resolution procedure mentioned.²⁷⁶

269. CRPD, General Comment No. 4, *supra* note 23, ¶¶ 11–12.

270. Special Education Act, art. 2 para. 5.

271. *Id.* art. 21 para. 3.

272. *Id.* art. 21 para. 2.

273. *Id.* art. 21 para. 3.

274. *Id.* art. 17 para. 1 subparas. 1–3.

275. *Id.* art. 16 para. 4.

276. The provision states only that "the opportunity for the care giver, such as the parents, etc. to state opinions shall be guaranteed." *Id.*

Consequently, while the percentage of students with disabilities enrolled in mainstream schools increased, the percentage of students in mainstream classes decreased from 25.5% to 16.8% from 2014 to 2020.²⁷⁷ Ironically, more students with disabilities have received segregated education after Korea enacted the laws promoting integrated education pursuant to Article 24 of the CRPD.²⁷⁸

It is also worth noting that Korea is planning to build more segregated special education schools. There were 182 segregated special schools in Korea in 2020, and the Ministry of Education planned to build five more in 2021.²⁷⁹ In its most recent Special Education Operation Plan, the Ministry of Education continues to emphasize building special segregated schools and classes for students with disabilities.²⁸⁰ However, building segregated special education schools has triggered “Not in My Back Yard-ism,” where residents oppose building facilities for persons with disabilities (such as special schools) in their neighborhood out of fear that such facilities would decrease their real estate’s value.²⁸¹ As a result, such facilities can generally only be built in rural areas, which are inconvenient to access.²⁸²

Moreover, like the Chinese government, the Korean government also implements a series of five-year plans for persons with disabilities called “Special Education Development Plans,” instead of emphasizing inclusive or integrated education.²⁸³ All these policies and practices reflect a preference for segregated education for students with disabilities, which is contradictory to the CRPD

277. U.N. Econ. & Soc. Comm’n for Asia & the Pac., *Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities Country Case Study: Republic of Korea* 54 (2023), <https://www.unescap.org/sites/default/d8files/2023-07/ESCAP-2023-RP-Harmonization-National-Laws-Convention-Rights-Person-Disability-korea-Case-study.pdf> [<https://perma.cc/UN4Z-JNHC>] [hereinafter UNESCAP, *Harmonization of National Laws with the CRPD in Korea*].

278. CRPD, *Concluding Observations on the Combined Second and Third Periodic Reports of Korea*, *supra* note 24, ¶ 49.

279. Ministry of Educ., 2021-nyondo teuksu gyoyuk unyeong gyehoek [2021 Special Education Operation Plan] 3 (2021) (S. Kor.).

280. Ministry of Educ., 2024-nyondo teuksu gyoyuk unyeong gyehoek [2024 Special Education Operation Plan] 11 (2024) (S. Kor.).

281. Kim, *Disability Rights in Korea*, *supra* note 225, at 162.

282. *Id.* at 162.

283. Jeongae Kang & Mikyung Shin, *Special Education in South Korea: Policies and Issues*, 2 J. SPECIAL EDUC. PREPARATION 70, 72 (2022).

Committee's recommendations and the requirement of inclusive education.

Overall, considering the definition of inclusion in General Comment No. 4, as well as the CRPD Committee's recommendations on education in its Concluding Observations, it becomes evident that neither China, Japan, nor Korea comply with Articles 1, 2, or 24 of the CRPD. This noncompliance may be rooted in the countries' ableist culture and exam-centered education systems discussed in Part III. Given the absence of a clear definition of inclusive education, the lack of policies explicitly promoting inclusive education, and the prevailing emphasis on special segregated education, inclusive education in these three countries appears to be more of a symbolic gesture than a systematic focus in the education field for persons with disabilities. However, even without full compliance, the CRPD is effective in improving students with disabilities' education situation, as discussed below.

V. EFFECTIVENESS OF THE CRPD

While the dominant understanding of disability in China, Japan, and Korea is still based in a medical model that results in symbolic rather than genuine inclusive education, persons with disabilities' chance to receive qualified education has in fact increased in these countries since their ratification of the CRPD. In other words, even though these countries have not fully complied with Articles 1 and 24 of the CRPD, the treaty has still had positive effects on their education practices. The term "noncompliant effectiveness," as proposed by this Article, captures this nuanced impact of human rights treaties. This Part discusses noncompliant effectiveness as it relates to the CRPD in China, Japan, and Korea in detail.

A. Noncompliant Effectiveness in China

Before China ratified the CRPD, the form of education a student with disabilities would receive purely depended on their disability type and their ability to adapt to standardized general education.²⁸⁴ Even though policymakers emphasized "Zero Refusal,"

284. Can Ji Ren Bao Zhang Fa (残疾人保障法) [Disability Protection Act] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 28, 1990, effective May 15, 1991), art. 19 (China), *translated in Law of the People's Republic of China on the Protection of Disabled Persons [Revised]*, LAWINFOCHINA, <http://www.lawinfochina.com/display.aspx?id=869&lib=law> [<https://perma.cc/4LLV-8E5W>].

schools were only required to accept students with disabilities who could adapt to the mainstream environment and standardized curriculum.²⁸⁵ If a student could not adapt, the school was legally permitted to reject their enrollment application.²⁸⁶ Without requiring schools to provide reasonable accommodations, many students with disabilities went to segregated special schools because they were not able to adapt to mainstream schools.²⁸⁷ The 2008 Chinese Disability Law, which was revised to comply with the CRPD,²⁸⁸ insists that the form of education—segregated or integrated—depends on students' ability and disability types.²⁸⁹ External factors aside from the individual's ability to adapt to mainstream school are not taken into consideration.²⁹⁰ The CRPD Committee has critiqued this practice and urged changes.²⁹¹

Yet subsequent revisions have moved China closer towards compliance. The 2017 Education Regulation, another revision made pursuant to CRPD obligations, amended the individual ability assessment school placement method.²⁹² Article 19 specifies that the

285. *Id.* art. 22. "Ordinary educational institutions shall provide education to disabled persons who are *able to* respond to ordinary education. Ordinary primary schools and junior middle schools must admit disabled children or juveniles who are *able to adapt* themselves to life and study there." *Id.* (emphasis added).

286. *Id.*

287. For examples of students with disabilities being rejected by mainstream schools because they were unable to adapt to the school environment without reasonable accommodations, see HUM. RTS. WATCH, "AS LONG AS THEY LET US STAY IN CLASS": BARRIERS TO EDUCATION FOR PERSONS WITH DISABILITIES IN CHINA (2013) [hereinafter HUM. RTS. WATCH, "AS LONG AS THEY LET US STAY IN CLASS"], <https://www.hrw.org/report/2013/07/15/long-they-let-us-stay-class/barriers-education-persons-disabilities-china> [https://perma.cc/UKM2-4AM5].

288. Comm. on the Rts. of Persons with Disabilities, *Implementation of the Convention on the Rights of Persons with Disabilities: Initial Reports Submitted by States Parties Under Article 35 of the Convention*, ¶ 5, U.N. Doc. CRPD/C/CHN/1 (Feb. 8, 2011) [hereinafter CRPD, *China's Initial Report*].

289. Canji Ren Baozhang Fa (残疾人保障法) [Disability Protection Act] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 24, 2008, effective July 7, 2008), art. 23 (China), *translated in Law of the People's Republic of China on the Protection of Disabled Persons (2008 Revision)*, LAWINFOCHINA, <http://www.lawinfochina.com/display.aspx?lib=law&id=7015&CGid> [https://perma.cc/A2CJ-X5AL].

290. *Id.*

291. CRPD, *Concluding Observations on the Initial Report of China*, *supra* note 24, ¶ 35.

292. Canji Ren Jiaoyu Tiaoli (残疾人教育条例) [Regulation on Education for Persons with Disabilities] (promulgated by the St. Council, Jan. 11, 2017, effective

determination of a student's ability to adapt should consider not just the type and severity of the disability but also the conditions of the mainstream schools—a societal factor.²⁹³ If students with disabilities need accommodations that are not available at their neighborhood schools, the local government can place them in a nearby school equipped to provide the necessary support.²⁹⁴ In the past, these students may have needed to enroll in special segregated schools.²⁹⁵ Significantly, the 2017 Education Regulation demonstrates its preference to place students with disabilities in mainstream environments.²⁹⁶ None of the previous disability-related education laws and policies specified any preferred education forms or approaches for students with disabilities. At a minimum, this provision indicates that the law is supportive of integrated education, which is preferred to segregated education.²⁹⁷

Nor was this the only way in which the 2017 Regulations moved Chinese law towards compliance. In the past, once students with disabilities were enrolled in segregated special education schools, no law ensured they could go back to a mainstream school.²⁹⁸

May 1, 2017), art. 17 (China), https://www.gov.cn/zhengce/content/2017-02/23/content_5170264.htm [<https://perma.cc/NPD6-R5PK>].

293. *Id.* art. 19.

294. *Id.* art. 17. This arrangement demonstrates the law's preference for integrated education, especially since the Chinese Compulsory Education Law, in principle, does not typically allow students to attend non-neighborhood schools. *See, e.g.,* Deng & Poon-McBrayer, *Inclusive Education*, *supra* note 21, at 118 (providing an overview of the Compulsory Education Law and its impacts on special education in China).

295. HUM. RTS. WATCH, "AS LONG AS THEY LET US STAY IN CLASS," *supra* note 287, at 4–5.

296. 2017 Regulation on Education for Persons with Disabilities, art. 3 ("The education for disabled people should improve the quality of education, actively promote inclusive education, and depending on the type of disability and the individual's ability to receive education, either regular or special education approaches should be adopted, with a preference for regular education approaches.").

297. However, ironically, Article 22 states that if there are too many students with disabilities in a mainstream school, then the school can set the special education class, which is another method of segregation. *Id.* art. 22.

298. *See generally, e.g.,* Canjiren Jiaoyu Tiaoli (残疾人教育条例) [Regulation on the Education of the Disabled People] (promulgated by the St. Council, Aug. 23, 1994, effective Aug. 23, 1994) (China), *translated in Regulation on the Education of Persons with Disabilities*, LAWINFOCHINA, <http://lawinfochina.com/display.aspx?id=21182&lib=law&EncodingName=big5> [<https://perma.cc/LVC4-LHRE>] (failing to mention transfer from special school to mainstream schools); Canji Ren Baozhang Fa (残疾人保障法) [Disability Protection Act] (promulgated by the Standing Comm. Nat'l People's Cong., Apr.

However, the 2017 Education Regulation now clarifies that if students at special schools are more capable of receiving regular education after rehabilitation, the school can recommend that parents transfer their children to mainstream schools.²⁹⁹ If there are disputes on the appropriate form of education for students with disabilities, parents can apply for an administrative review by the government.³⁰⁰ Theoretically, if any party remains unsatisfied with the outcome of that administrative review, they can file suit in court.³⁰¹ This system of administrative reconsideration and litigation provides both administrative and judicial procedural protections for education in mainstream settings for students with disabilities and exhibits greater enforceability.

In China's disability-related laws and policies prior to it ratifying the CRPD, reasonable accommodations were not mentioned at all.³⁰² It was thus difficult for students who had disability-related

24, 2008, effective July 7, 2008) (China), *translated in Law of the People's Republic of China on the Protection of Disabled Persons (2008 Revision)*, LAWINFOCHINA, <http://www.lawinfochina.com/display.aspx?lib=law&id=7015&CGid> [<https://perma.cc/A2CJ-X5AL>] (failing to mention transfer from special school to mainstream schools).

299. 2017 Regulation on Education for Persons with Disabilities, art. 18.

300. Public schools in China are administered by the education departments of local governments, so parents can appeal to these authorities if they are dissatisfied with decisions made by the schools. *See* Xingzheng Fuyi Fa (行政复议法) [Administrative Reconsideration Law] (promulgated by Standing Committee of the National People's Congress, April 29, 1999, revised by Standing Comm. of the Nat'l People's Congress, Sept. 1, 2023), art. 11(15) (China), *translated in Administrative Reconsideration Law of the People's Republic of China*, CHINESE L. TRANSLATE (Sept. 1, 2023), <https://www.chinalawtranslate.com/en/Administrative-Reconsideration-Law-of-the-People's-Republic-of-China> [<https://perma.cc/W55W-5TS5>] (providing that a citizen may apply for administrative reconsideration where he or she "believes that other administrative acts of an administrative organ have infringed upon their lawful rights and interests").

301. *See* Xingzheng Susong Fa (行政诉讼法) [Administrative Litigation Law] (promulgated by Nat'l Congress, Apr. 4, 1989, revised by Standing Comm. of the Nat'l People's Congress, June 27, 2017), art. 2 (China), *translated in The Administrative Litigation Law of the People's Republic of China (2017 Amendment)*, LAWINFOCHINA, <http://www.lawinfochina.com/display.aspx?id=23600&lib=law> [<https://perma.cc/5K9C-N5D8>] ("Citizens, legal persons or other organizations feeling that their lawful rights and interests have been infringed upon by an administrative act of an administrative organ or its personnel, have the right to bring a suit before a people's court in accordance with this Law.")

302. *See* Fengming Cui et al., *Equal Participation of Persons with Disabilities in the Development of Disability Policy on Accessibility in China*, 65 INT'L J. DEV.

learning needs to pass the standardized high school or university entrance examinations.³⁰³ Article 54 of the 2008 Disability Law, which is an effort to fulfill the CRPD,³⁰⁴ ensured accommodation and assistance for persons with disabilities in a State-held examination process for the first time in Chinese law.³⁰⁵ While the scope was initially limited to blind students,³⁰⁶ the 2008 Law marked a significant milestone in Chinese disability law and policy history, laying the groundwork for other important policies that considerably improve persons with disabilities' educational opportunities. Based on the 2008 Disability Law, the Chinese Education Ministry and the Chinese Disabled People's Federation issued a regulation in 2015 detailing reasonable accommodations for students with disabilities during the General College Entrance Examination in 2017.³⁰⁷ The regulation enumerates twelve specific reasonable accommodations, including accessible or individual exam rooms, Braille test papers, sign language interpreters, and extended exam time.³⁰⁸ This list is not exhaustive; Item 12 provides for "[o]ther reasonable accommodations that are necessary and can be provided."³⁰⁹ This implies that students with disabilities can apply for other accommodations based on their unique learning needs. Similarly, Article 52 of the 2017 Education Regulation recognizes the right to reasonable accommodations during exams for students with disabilities.³¹⁰ Consequently, an increasing number of students with

DISABILITY 319, 321–22 (2019) (noting that the first Chinese policy to provide accommodations to students with disabilities was not enacted until 2014).

303. *Id.* at 321.

304. CRPD, *China's Initial Report*, *supra* note 288, ¶¶ 5, 23 (explaining the efforts that China has made to improve education for persons with disabilities).

305. Disability Protection Act, art. 54.

306. *See* Disability Protection Act, art. 54 (mentioning only blind people in the provision concerning obtaining accommodations and assistance in State-held examinations).

307. Canji Ren Kanji Putong Gaozhong Xuexiao Zhaosheng Quanguo Tongyi Kaoshi Guanli Guiding (残疾人参加普通高等学校招生全国统一考试管理规定) [Regulations on the Management of Disabled People Participating in the National Unified Entrance Examination for Regular Higher Education Institutions] (promulgated by Ministry of Educ., China Disabled Persons' Fed'n, Apr. 7, 2015) (China), http://www.moe.gov.cn/srcsite/A15/moe_776/s3258/201704/t20170428_303388.html [<https://perma.cc/K6JX-JJPU>].

308. *Id.* art. 5.

309. *Id.*

310. Canji Ren Jiaoyu Tiaoli (残疾人教育条例) [Regulation on Education for Persons with Disabilities] (promulgated by the St. Council, Jan. 11, 2017, effective May 1, 2017), art. 52 (China), https://www.gov.cn/zhengce/content/2017-02/23/content_5170264.htm [<https://perma.cc/NPD6-R5PK>].

disabilities have taken university entrance exams with reasonable accommodations each year, leading to a steady increase in the number of these students accepted into universities.³¹¹

In short, while China has failed to formally comply with the CRPD by recognizing the right to reasonable accommodation in schools, the CRPD has had the effect of promoting the opportunity for students with disabilities to attend mainstream schools and receive reasonable accommodations, at least in State-held exams—a mechanism that Chinese persons with disabilities never had before China ratified the CRPD.³¹²

B. Japan

Although Japan has not complied with Articles 1, 2, or 24 of the CRPD, the legal reforms it has implemented since joining the Convention represent a significant improvement compared to its previous laws.

Prior to Japan signing the CRPD, its laws never recognized social factors as a cause of disability; rather, disability was defined as a purely individual deficiency.³¹³ While assessments based on medical standards still exist, Japan has introduced more efforts to remove social barriers since adopting the CRPD. For example, in 2020, the Act on Promotion of Smooth Transportation for Elderly People, Persons with Disabilities, etc. was revised to include elementary and junior high schools as “specified buildings” that must be accessible.³¹⁴

311. From 2011 to 2015, the number of students with disabilities attending regular universities was 38,289; from 2016 to 2020, this number increased to 57,477, reflecting an increase of 50.11%. “*Shisanwu*” *Zhongguo Putong Gaoxiao luqu Chao 5.7 Wan Canji Xuesheng Jiao “Shi’erwu” Zeng Yu 50%* (“十三五”中国普通高校录取超5.7万残疾学生 较“十二五”增逾50%) [*In the 13th Five-Year Plan Period, More than 57,000 Students with Disabilities Were Enrolled in China’s General Colleges and Universities, an Increase of More than 50% Compared with the 12th Five-Year Plan*], CHINA NEWS (Oct. 11, 2021) (China), <https://www.chinanews.com.cn/gn/2021/10-11/9583824.shtml> [<https://perma.cc/7ADA-BR6P>].

312. *China’s Combined Second and Third Periodic Reports*, *supra* note 231, ¶¶ 14, 88.

313. Ayako Hatano, Hiromichi Matsuda, & Yota Negishi, *The Impact of the United Nations Human Rights Treaties on the Domestic Level in Japan*, in *THE IMPACT OF THE UNITED NATIONS HUMAN RIGHTS TREATIES ON THE DOMESTIC LEVEL: TWENTY YEARS ON THE DOMESTIC LEVEL IN JAPAN* 608, 691–92 (Christof Heyns, Frans Jacobus Viljoen & Rachel Murray eds., 2d rev. ed. 2024).

314. *Kōrei-sha, shōgai-sha-tō no idō-tō no enkatsuka no sokushin ni kansuru hōritsu* [Act on the Promotion of Smooth Transportation for Elderly Persons, Persons with Disabilities, etc.] Law No. 58 of 2020, art. 2, para. 18 (Japan),

In 2022, the Japanese Ministry of Education, Culture, Sports, Science, and Technology issued a report stating that by the 2025 fiscal year, 95% of all elementary and junior high schools should have accessible restrooms and 40% of all schools with students with disabilities should have elevators.³¹⁵

Significantly, Japan had had a segregated education system since the 1960s. In the 1980s, students with specific disabilities, such as blindness, were only allowed to enroll in special segregated schools, and enrolling such students in mainstream schools was a violation of then-existing Japanese laws.³¹⁶ This practice existed in Japan for almost half a century.³¹⁷ In addition, the Asahikawa District Court had ruled that the school's head teacher had authority to decide the placement of students with disabilities between mainstream class or special segregated class.³¹⁸ The 2002 education reform in Japan introduced the "Certificate School Attendance System."³¹⁹ The local municipal board of education collected information about children with disabilities of school age in its district, and only students who received permission from the board could enroll in mainstream schools.³²⁰ Therefore, between 2002 and 2013, the default for students with disabilities was to enroll in special segregated schools, whereas enrolling in mainstream schools was an exception.³²¹

After signing the CRPD in 2007, the Japanese government reformed the education system in an effort to fulfill its obligations. In 2013, the Certificate School Attendance System was abolished and all students with disabilities became eligible to enroll in mainstream schools.³²² Now, the default is that students with disabilities should enroll in mainstream schools, and segregated school is the exception;³²³ this shift represents the noncompliant effectiveness of the CRPD. The local Board of Education determines the placement of

https://laws.e-gov.go.jp/law/418AC0000000091/20240401_505AC0000000058#Mp-Ch_2 [<https://perma.cc/KC5P-B9WF>].

315. "Guidelines for Promoting Barrier-Free School Facilities" Revised, DISABILITY INFO. RES. (Japan), <https://www.dinf.ne.jp/d/0/495.html> [<https://perma.cc/MQ27-U8W7>].

316. Yoshitoshi et al., *supra* note 199, at 1426–27.

317. *Id.* at 1427.

318. *Id.* at 1431–32.

319. *Id.* at 1427.

320. *Id.*

321. *Id.* at 1428, 1434.

322. *Id.* at 1427–28.

323. *Id.* at 1428.

students with disabilities based on their disability types, learning needs, opinions of their parents, and advice from experts.³²⁴ In addition, the percentage of students with disabilities who have an Individual Education Support Plan in mainstream schools, an indicator for reasonable accommodations, has increased year after year.³²⁵ Compared to the pre-CRPD era, Japan's current education system has significantly increased educational opportunities and Individual Education Plans for students with disabilities in mainstream schools.³²⁶

Similarly, the term "reasonable accommodation" was added to Japanese laws after adopting the CRPD.³²⁷ As a result, Japanese universities are now required to provide reasonable accommodations for students with disabilities for the admission exams.³²⁸ While the laws are vague about whether denial of reasonable accommodations is a form of discrimination based on disability, students with disabilities now undoubtedly have a better chance to receive reasonable accommodations in schools and exams.³²⁹ In addition, higher education institutions are legally required to create guidelines or policies to implement the Japanese Act on Eliminating Discrimination Based on Disability.³³⁰ From 2007 to 2018, the

324. Japan, *Initial Report Submitted by Japan Under Article 35 Of the Convention on the Rights of Persons with Disabilities*, ¶ 158, U.N. Doc. CRPD/C/JPN/1 (Oct. 4, 2017) [hereinafter *Japan's Initial Report*].

325. *Id.*

326. *Id.* ¶¶ 156, 167. Before Japan ratified the CRPD in May 2009, the number of children and students with disabilities receiving disability-related support services at elementary and junior high schools totaled 54,021. *Id.* ¶ 156. By May 2014, this number had increased to 83,750. *Id.* Japan decided to revise its domestic laws to align with the CRPD obligations before officially ratifying the treaty. *Id.* ¶ 21. Therefore, the improvements after 2009 should be considered an effect of the CRPD.

327. Hasegawa, *supra* note 194, at 23.

328. See, e.g., *Reasonable Accommodations*, AKITA INT'L UNIV. (Japan), <https://web.aiu.ac.jp/en/campuslife/support> [<https://perma.cc/UD5U-KV82>] (explaining the university's policies on providing reasonable accommodations).

329. For an example of vague legal provisions, see Shōgaisha kihonhō [Basic Act for Persons with Disabilities], Law No. 84 of 1970, art. 4, (Japan), translated in Basic Act for Persons with Disabilities, JAPANESE L. TRANSLATION, <https://www.japaneselawtranslation.go.jp/en/laws/view/2436> [<https://perma.cc/D48Y-5QYP>]. See also *supra* notes 194–197 and the accompanying text for a discussion of this vagueness and its consequences.

330. JAPAN STUDENT SERVS. ORG., NATIONAL SURVEY OF SUPPORTS FOR STUDENTS WITH DISABILITIES IN HIGHER EDUCATION SETTINGS IN JAPAN (PROVISIONAL TRANSLATION) 10 (2021) (Japan),

percentage of schools that created such policies increased from 7.9% to 54.2%.³³¹ As a result, the number of students with disabilities enrolling in higher education institutes has increased.³³²

Japan's failure to recognize the denial of the right to reasonable accommodation as a form of discrimination based on disability, as well as its failure to mention or promote inclusive education in its legal system, demonstrates noncompliance with the CRPD. However, Japanese students with disabilities now have greater opportunities to receive an education in mainstream settings with reasonable accommodations, such as disability-related educational support. This reflects the effectiveness of the CRPD in shaping Japanese government practice.

C. Korea

Korea's situation is different from China and Japan given the influence of the ADA on Korea's disability rights movement.³³³ However, given that the ADA does not extend to reform in inclusive education and other support systems to students with disabilities,³³⁴ Korea's legal reforms in these areas after ratifying the CRPD demonstrate its efforts to fulfill its treaty obligations.

The Korean government revised the Korean Disability Welfare Act in 2017 after the CRPD Committee's critique of the purely medical-based disability assessment process.³³⁵ It replaced the "grade of disability" notion with "severity of disability," which is more

https://www.jasso.go.jp/en/statistics/shougai_gakusei/_icsFiles/afieldfile/2022/07/15/fy2018_survey.pdf [<https://perma.cc/TAC2-M89B>].

331. *Id.* at 10 fig.1.

332. *Id.* at 1.

333. Kim, *Disability Rights in Korea*, *supra* note 225, at 170.

334. See Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101–213 (omitting the terms "inclusive education" or "integrated education").

335. "The [CRPD] Committee is concerned that the Welfare of Disabled Persons Act refers to the medical model of disability." Comm. on the Rts. of Persons with Disabilities, *Concluding Observations on the Initial Report of the Republic of Korea*, ¶ 6, U.N. Doc. CRPD/C/KOR/CO/1 (Oct. 29, 2014); see also Act on Welfare of Persons with Disabilities (Disability Welfare Act), art. 2 (S. Kor.), *translated in* Korean Legislation Research Institute's online database, https://elaw.klri.re.kr/eng_service/main.do [<https://perma.cc/5HDZ-L7NM>] (search required) (ascribing to the medical model of disability including by defining a "person with a disability" as someone "who is hampered by substantial long-term impairment in daily life or social activity due to physical or mental disability").

focused on individual needs.³³⁶ In the past, only persons with disabilities between Grade I and Grade III were eligible to apply for activity assistant services; however, now all persons with disabilities can apply for such reasonable accommodations.³³⁷ The budget for such services was also significantly increased.³³⁸ In addition, more special education centers were built to provide individualized education support to students with disabilities based on learning needs in mainstream schools—the number of such centers increased from thirty-one to forty-two between 2014 and 2017.³³⁹ Moreover, students with disabilities can request special education assistants in mainstream schools, and the number of such assistants increased from 7,265 to 7,711 from 2014 to 2017.³⁴⁰ In fact, the number of students with disabilities enrolled in mainstream schools increased from 70.7% to 72.1% from 2017 to 2020.³⁴¹ In addition, the number of students who received disability-related services increased from 62,500 in 2006 to 98,154 in 2021.³⁴² Students with disabilities clearly now have more support in mainstream schools due to the CRPD's effectiveness.

Additionally, recent revisions to the Korean Special Education Act, influenced by the CRPD, have improved educational opportunities and equality for persons with disabilities compared to prior provisions.³⁴³ Article 22 of the Act mandates that compulsory education schools must establish individualized education support

336. Comm. on the Rts. of Persons with Disabilities, *Combined Second and Third Periodic Reports Submitted by the Republic of Korea Under Article 35 of the Convention Pursuant to the Optional Reporting Procedure*, ¶ 3, U.N. Doc. CRPD/C/KOR/2-3 (Oct. 11, 2019).

337. *Id.* ¶ 9.

338. *Id.* “As all disabled people will become eligible for applying for the activity assistant services starting July 2019, unlike in the past when only those in Grades I through III were eligible, the budget for the said services was drastically increased by 45.3% from KRW 609.7 billion (approximately 426.5 million US dollars) in 2018 to KRW 1.0035 trillion (approximately 700.94 million US dollars) in 2019.”

339. *Id.* ¶ 138.

340. *Id.* ¶ 139.

341. UNESCAP, HARMONIZATION OF NATIONAL LAWS WITH THE CRPD IN KOREA, *supra* note 277, at 54.

342. *Id.*

343. Act on Special Education for Persons with Disabilities (Special Education Act), *amended by* Act No. 18992, Oct. 18, 2022 (S. Kor.), *translated in* Korean Legislation's Research Institute's online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=61383&lang=ENG [<https://perma.cc/TDH8-3974>].

teams to devise tailored education plans for students with disabilities.³⁴⁴ The team discusses and develops an individualized education plan for students with disabilities every semester.³⁴⁵ Article 29 requires higher education institutions to establish and operate special support committees to develop the university's plan to support students with disabilities.³⁴⁶ Such institutions are also required to build Support Centers to handle reasonable accommodation requests, individualized educational plans, and other disability-related matters.³⁴⁷

Another indication of the effectiveness of the CRPD in Korea is the revision of the law for accessibility. Previous versions of the law did not require kindergartens and schools to proactively ensure accessibility.³⁴⁸ However, the Act now mandates that newly built schools have a barrier-free "Certificate," which ensures the accessibility of the facilities.³⁴⁹

None of this alters the assessment presented above that Korea does not fully comply with the CRPD's obligations, as the dominant understanding of disability still focuses on individuals' deficiencies and the implementation of inclusive education remains lacking. Nevertheless, students with disabilities in Korea have more opportunities to receive disability-related educational support and services in mainstream society after the Korean government ratified the CRPD. This demonstrates the effectiveness of the CRPD.

In conclusion, while neither China, Japan, nor Korea comply with Articles 1 and 24 of the CRPD because of their medical-based understanding of disability, the effectiveness of the CRPD is still evident in all three countries. This noncompliant effectiveness improves the education situation for persons with disabilities because they have greater opportunities to enroll in mainstream educational environments and to receive reasonable accommodations than they did prior to their countries' ratification of the CRPD.

344. *Id.* art. 22.

345. *Id.*

346. *Id.* art. 29.

347. *Id.* art. 30.

348. For a particularly salient example, see Act on the Guarantee of Convenience Promotion of Persons With Disabilities, Senior Citizens, Pregnant Women and Nursing Mothers], *amended by* Act No. 19302, Mar. 28, 2023 (S. Kor.), *translated in* Korean Legislation Research Institute's online database, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=70571&lang=ENG [<https://perma.cc/ZP45-HTAP>].

349. *Id.* art. 10-2 para. 3.

CONCLUSION

This Article reconciles seemingly contradictory perspectives on whether human rights treaties “matter” by proposing the concept of noncompliant effectiveness. It argues that human rights treaties can be effectively implemented without formal State compliance, as compliance and effectiveness are distinct concepts. Accordingly, beyond the scenario of noncompliant effectiveness, there are three additional situations for implementing human rights treaties in domestic legal systems.

Noncompliant ineffective implementation occurs when countries ratify human rights treaties but neither comply with the treaty obligations to revise their domestic legal systems and practices nor improve the target group’s situation. For example, Afghanistan has ratified the Convention on the Rights of the Child (CRC), and while the Taliban has come to power, the Afghan government has not withdrawn from the CRC.³⁵⁰ Theoretically, the Taliban administration should fulfill its obligations to protect girls’ right to education.³⁵¹ However, the Taliban administration has banned girls from accessing secondary schools and universities since August 2022.³⁵² This situation exemplifies what scholars have referred to as States Parties “decoupling” from their treaty promises.³⁵³

The compliant ineffective situation is illustrated by the whaling example I previously discussed.³⁵⁴ Another example that may be helpful to understand is Canada’s ratification of the Convention on

350. *Convention on Rights of Children*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4 [<https://perma.cc/4Y8G-GJER>].

351. *Convention on the Rights of the Child* arts. 2, 23, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3, 46, 51–52.

352. As of August 2024, at least 1.4 million Afghan girls older than twelve have been denied access to education. Sahar Fetrat, *Taliban’s Attack on Girls’ Education Harming Afghanistan’s Future: Three Years Since Girls Have Been Out of School Beyond Grade 6*, HUM. RTS. WATCH (Sept. 17, 2024), <https://www.hrw.org/news/2024/09/17/talibans-attack-girls-education-harming-afghanistans-future> [<https://perma.cc/8KW2-Q9PN>]; Press Release, U.N. Educ., Sci. & Cultural Org., *Afghanistan: 1.4 Million Girls Still Banned From School By De Facto Authorities* (Sept. 24, 2024), <https://www.unesco.org/en/articles/afghanistan-14-million-girls-still-banned-school-de-facto-authorities> [<https://perma.cc/4QWB-BCZ7>].

353. Hafner-Burton et al., *Politics of Legitimation*, *supra* note 1, at 117.

354. *See supra* notes 115–116 and accompanying text (discussing how many countries with near-perfect compliance records of international anti-whaling treaties were already refraining from whaling prior to ratifying those treaties).

the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1982.³⁵⁵ As early as 1977, the Canadian Human Rights Act had already prohibited discrimination based on sex,³⁵⁶ which brings into the doubt the extent to which ratifying CEDAW influenced Canadian compliance with its substantive provisions.

The most ideal implementation of human rights treaties is compliant effectiveness—when a country revises its domestic legal system and practices to fully align with treaty obligations, and tangible improvements occur in practice. However, at least in the case of the right to education, the CRPD Committee frequently critiques and provides recommendations for even the most developed and mainstream-centered Northern European countries.³⁵⁷ Therefore, whether the most ideal compliant effective implementation can truly occur, at least in the case of persons with disabilities’ right to inclusive education, remains an open question.

This Article examines the most common situation: noncompliant effective implementation of human rights treaties. It examines China, Japan, and Korea—perhaps the least likely cases for

355. *State Parties of Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en [<https://perma.cc/D5T8-HLAZ>]; CEDAW art. 1, *supra* note 102.

356. Canada Human Rights Act, R.S.C. 1985, c. H-6, § 3(1) (Can.); *see also* Jessica Riffin, *The Potential Impact of CEDAW Ratification on U.S. Employment Discrimination Law: Lessons from Canada*, 42 COLUM. HUM. RTS. L. REV. 541, 561–69 (2011) (detailing how CEDAW ratification has influenced women’s employment rights in Canada).

357. For example, according to a recent study examining education formats and types for students with disabilities in thirteen developed countries, Italy has the highest rate of students with disabilities being educated in the same classrooms and with the same subjects as their peers. Leila Hoteit et al., *What a Multicounty Study Reveals About K–12 Education Models for Students with Disabilities*, BOSTON CONSULTING GRP. (Dec. 7, 2022), <https://www.bcg.com/publications/2022/inclusive-education-for-students-with-disabilities-analysis> [<https://perma.cc/ZD98-SUZK>]. Italy’s achievement is not attributable to the CRPD, as their mainstreaming efforts began in the 1970s, long before the introduction of the CRPD. *Id.*; Kanter et al., *Inclusive Education Under International Law*, *supra* note 28, at 25–26. Norway has the second-highest rate of such practices. Hoteit et al., *supra*. However, the CRPD Committee still has many critiques of Norway’s inclusive education system, particularly concerning the persistence of the medical model of disability and the continued denial of reasonable accommodations in practice. Comm. on the Rts. of Persons with Disabilities, *Concluding Observations on the Initial Report of Norway*, ¶¶ 37–38, U.N. Doc. CRPD/C/NOR/CO/1 (May 7, 2019).

effectiveness, given their Confucian tradition—to demonstrate the noncompliant effectiveness of the CRPD, the first international human rights treaty dedicated to protecting persons with disabilities.

Although China, Japan, and Korea do not fully comply with Article 24 of the CRPD on inclusive education—because of problematic or absent definitions of disability, reasonable accommodations, and disability-based discrimination—improvements have occurred, suggesting that the CRPD has been effective even without full compliance. Prior to ratifying the CRPD, students with disabilities in these countries were often forced to enroll in segregated special schools.³⁵⁸ Students with disabilities now have greater opportunities to equal education because they have more chances to enroll in mainstream schools and receive reasonable accommodations.³⁵⁹ These improvements may not have occurred without the governments' ratification of the CRPD and their efforts to meet their resulting legal obligations. The educational situation for students with disabilities in China, Japan, and Korea thus illustrates the nuanced concept of noncompliant effectiveness of human rights treaties.

Every U.N. human rights treaty is built around core principles. For example, the CEDAW's central goal is to ensure equal treatment of and legal status for women as compared to men,³⁶⁰ while the CRPD emphasizes that disability is also a social construct and affirms the right of persons with disabilities to reasonable accommodations.³⁶¹ Even when States Parties do not comply with these principles, human rights treaties can still effectively influence their domestic practice.

But such noncompliant effectiveness tends to be superficial and temporary. As discussed in this Article, China, Japan, and Korea have not fully adopted the social model of disability as the CRPD requires, and therefore resources have not been systematically allocated to inclusive education.³⁶² Although there has been some progress in providing individualized educational support for students with disabilities in these countries, the increasing reliance on

358. For more on this, *see supra* notes 289–291, 318–320, and 345–346 and accompanying text.

359. *See supra* notes 309–312, 325–330, and 329–335 and accompanying text for a discussion of these trends.

360. CEDAW arts. 1–2, *supra* note 102.

361. CRPD arts. 1–2, *supra* note 8.

362. *See supra* Section IV.B (discussing developments in inclusive education in all three countries).

segregated educational settings and the lack of reasonable accommodations in mainstream classrooms hinder long-term social inclusion for students with disabilities.³⁶³ This demonstrates that noncompliant effectiveness is less sustainable than compliant effectiveness.

The dilemma posed by noncompliant effectiveness is not unique to the right to inclusive education under the CRPD. It can also occur with other rights of persons with disabilities, such as the right to equal recognition before the law,³⁶⁴ and with other human rights treaties protecting minorities, such as the CEDAW.³⁶⁵ For example, if a State Party's domestic law does not recognize the equal legal status of women with procedural guarantees but invests financially in women's education,³⁶⁶ the noncompliant effectiveness of the CEDAW may similarly be superficial.

Only by challenging deeply ingrained stereotypes and biases against marginalized groups can systemic change become possible. However, the implementation of human rights treaties is not linear.³⁶⁷ States Parties can begin to comply with the fundamental principles of these treaties at any stage, particularly as social attitudes shift by legal mobilization. In other words, compliant effectiveness is always possible.

Without fully embracing the CRPD's social model of disability and systematically reallocating resources to empower students with the right to reasonable accommodations in mainstream classrooms, the noncompliant effectiveness of the CRPD in improving education for students with disabilities may be superficial and temporary compared to compliant effectiveness. Only when States Parties recognize the social model of disability and treat the denial of reasonable accommodations as discrimination based on disability can the CRPD achieve genuine compliant effectiveness in advancing inclusive education.

363. JDF, PARALLEL REPORT FOR CRPD CONCLUDING OBSERVATIONS ON JAPAN, *supra* note 186, at 36; UNESCAP, HARMONIZATION OF NATIONAL LAWS WITH THE CRPD IN KOREAN, *supra* note 277, at 37; Ou, *supra* note 252.

364. CRPD art. 12, *supra* note 8.

365. CEDAW arts. 1–2, *supra* note 102.

366. *Id.* art. 10.

367. Kanter, *Do Treaties Matter*, *supra* note 3, at 579.