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# **NOTE: MIND THE GAP: RATIFICATION OF THE U.N. CONVENTION AGAINST DISCRIMINATION IN EDUCATION AS A SOLUTION TO SINGAPORE'S EDUCATIONAL GENDER GAP**

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## **Reporter**

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**Author:** Ben DuBois\*

\* J.D. 2021, The George Washington University Law School; B.A. 2015, Vanderbilt University.

## **Highlight**

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### ABSTRACT

*International student achievement scores in reading, math, and science demonstrate that **Singapore** is one of, if not the, highest achieving countries in the world. **Singapore** is known as a world leader in **education** and model for other countries looking to improve their **education** systems. However, **Singapore** also has a notable gender gap in student achievement, especially in the areas of reading literacy and science literacy. Additionally, **Singapore** has demonstrated views on human rights that result in unequal treatment on the basis of gender, including its failure to comply with international human rights treaties such as the Convention on the Elimination of all Forms of Discrimination Against Women. As women gain increased political influence and economic participation in **Singapore**, the gender gap in **education** and previous treatment of international human rights treaties are likely to become greater sources of frustration in the future. **Singapore** should ratify the United Nations Convention against Discrimination in **Education** to remedy its **educational** attainment gender gap.*

## **Text**

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[\*503]

### I. Introduction

*"Our most valuable asset is in the ability of our people. Yet we are frittering away this asset through the unintended consequences of changes in our **education** policy and equal career opportunities for women. This has affected their traditional role as mothers."* <sup>1</sup>

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<sup>1</sup> Meredith L. Weiss, *Diversity, Rights, and Rigidity in **Singapore***, 36 N.C. J. INT'L L. & COM. REGUL. 625, 631 (2011) (quoting Lee Kuan Yew, *The **Education** of Women and Patterns of Procreation*, 10 RIHED BULL. 1, 4 (1983)).

It has been nearly four decades since Singapore's former Prime Minister, Lee Kuan Yew, famously criticized gender equality in education in his 1983 National Day Rally Speech.<sup>2</sup> Today, there are approximately 228,000 primary school students in Singapore.<sup>3</sup> [\*504] Though they may be too young to realize it, each day when they attend school these students are fortunate enough to take part in one of (if not the) most effective education systems in the world.<sup>4</sup> However, as these students grow older, some of them will learn that they are not as fortunate as others: Singapore's female students will realize they are being surpassed by their male peers. Although Singapore's 2018 Programme for International Student Assessment scores were the second highest in the world, the state still experiences a significant gender gap in educational attainment.<sup>5</sup> The World Economic Forum<sup>6</sup> indicates that Singapore ranks eighty-fourth in the educational attainment gender gap and eighty-ninth in the literacy rate gender gap.<sup>7</sup> The World Economic Forum also states that Singapore's educational achievement gap has barely improved as compared to other nations over the last fourteen years.<sup>8</sup>

While Singaporean female students experience the detrimental effects of Singapore's educational attainment gap, other states have [\*505] taken action to reach gender parity in their respective education systems. For example, the Philippines has nearly achieved gender parity in educational attainment.<sup>9</sup> Though the Philippines does not demonstrate nearly the overall academic prowess that Singapore does,<sup>10</sup> it also does

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<sup>2</sup> See *id.*

<sup>3</sup> SING. MINISTRY OF EDUC., EDUCATION STATISTICS DIGEST 2018 2 (2018).

<sup>4</sup> See Andreas Schleicher, *PISA 2018: Insights and Interpretations*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT [OECD] 3, 6-8 (2019), <https://www.oecd.org/pisa/PISA%202018%20Insights%20and%20Interpretations%20FINAL%20PDF.pdf> [<https://perma.cc/8LMX-ULXN>] (Singaporean students achieved the second highest science, mathematics, and reading scores on the 2018 Program for International Student Assessment, a worldwide examination taken by Organisation for Economic Cooperation and Development countries that aims "to help schools and policy makers shift from looking upward within the education system towards looking outward to the next teacher, the next school, the next country").

<sup>5</sup> See WORLD ECON. F., THE GLOBAL GENDER GAP REPORT 2020, at 47 (2020), [http://www3.weforum.org/docs/WEF\\_GGGR\\_2020.pdf](http://www3.weforum.org/docs/WEF_GGGR_2020.pdf) [<https://perma.cc/Z5FN-DMZ6>] (the World Economic Forum's educational attainment metric "captures the gap between women's and men's current access to education through ratios of women to men in primary-, secondary-and tertiary-level education").

<sup>6</sup> The World Economic Forum's Global Gender Gap Report will be used as an authoritative source throughout this Note because (1) it "is based on a methodology integrating the latest statistics from international organizations and a survey of executives," *id.* at 2, and (2) it is frequently used in academic journal articles discussing international gender-related issues, including articles previously published in the *George Washington International Law Review*. See Monica Porter, *Combating Gender Inequality at Home and at Work: Why the International Labour Organization Should Provide for Mandatory Paid Paternity Leave*, 48 *GEO. WASH. INT'L L. REV.* 203 (2015); Morgan Somerset, *Norway or the Highway: Closing the Participation Gap in the United Kingdom's Labor Force Using Nordic Models of Success*, 50 *GEO. WASH. INT'L L. REV.* 389 (2018).

<sup>7</sup> WORLD ECON. F., *supra* note 5, at 309. The literacy rate gender gap metric assesses a "longer-term view of the country's ability to educate women and men in equal numbers ... through the ratio of the female literacy rate to the male literacy rate." *Id.* at 47.

<sup>8</sup> See *id.* at 309 (although Singapore's educational attainment gender gap score improved from 0.931 in 2006 to 0.990 in 2020, Singapore's world ranking only changed from eighty-sixth to eighty-fourth, indicating that other nations improved their educational attainment gender gaps by a higher rate).

<sup>9</sup> The Philippines achieved a near-perfect educational attainment score of 0.999 in The Global Gender Gap Report in 2020, including a perfect literacy rate score. *Id.* at 287.

not experience the large disparity in gender-based **educational** outcomes. <sup>11</sup>This phenomenon can partially be explained by the Philippines' recent action to remedy the gender gap that existed within the country by ratifying and implementing international human rights treaties, and enacting domestic legislation and judicial enforcement to comply with those treaties. <sup>12</sup>

The Philippines has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and in compliance with that treaty, passed the 2009 Magna Carta of Women, a far-reaching women's human rights law that aims to prohibit gender-based discrimination by identifying and advancing the rights of Filipino women. <sup>13</sup>Additionally, the Philippines ratified the U.N. Convention against Discrimination in **Education** (**Education** Convention) in 1964. <sup>14</sup>**Singapore**, on the other hand, has ratified CEDAW <sup>15</sup>but has not ratified the **Education** Convention. <sup>16</sup> [\*506] However, even when **Singapore** does ratify international human rights treaties, its frequent reservations <sup>17</sup>to those treaties, coupled with **Singapore's** dualist model of treaty incorporation, <sup>18</sup>limits the effectiveness of those treaties on the domestic enforcement of substantive rights.

This Note argues that **Singapore** should ratify the **Education** Convention as a means of remedying its **educational** gender gap because **Singapore's** dualist model, combined with the Convention's requirement of passing legislation to reduce the effects of **educational** inequality, will force **Singapore** to enact new domestic legislation that increases substantive **educational** equality. Part II of this Note will provide background information on the substantive rights addressed by CEDAW and the **Education** Convention, the enforcement mechanisms for

<sup>10</sup> Schleicher, *supra* note 4, at 6-8 (finding that the Philippines was one of the lowest performing nations in reading, mathematics, and science literacy).

<sup>11</sup> See WORLD ECON F., *supra* note 5, at 287 (in addition to being near the top of the **educational** attainment rankings, the Philippines ranks highly in female political empowerment and female economic participation and opportunity).

<sup>12</sup> See *Convention Against Discrimination in Education*, UNITED NATIONS TREATY COLLECTION, <https://treaties.un.org/pages/showDetails.aspx?objid=0800000280134150> [<https://perma.cc/9PCB-6RCB>] [hereinafter UNESCO **Education** Convention]; *Convention on the Rights of the Child*, UNITED NATIONS TREATY COLLECTION, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg no=IV-11&chapter=4&clang=en> [<https://perma.cc/8N72-TD9F>]; *Convention on the Elimination of All Forms of Discrimination Against Women*, UNITED NATIONS TREATY COLLECTION, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg no=IV-8&chapter=4&clang=en> [<https://perma.cc/Z7AJ-NRVD>]. The Philippines has ratified the Convention against Discrimination in **Education** (**Education** Convention), the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). See *id.*

<sup>13</sup> An Act Providing for the Magna Carta of Women, Rep. Act No. 9710, § 2 (2009) (Phil.) ("The State condemns discrimination against women in all its forms and pursues by all appropriate means and without delay the policy of eliminating discrimination against women in keeping with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international instruments consistent with Philippine law.").

<sup>14</sup> UNESCO **Education** Convention, *supra* note 12.

<sup>15</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, *supra* note 12.

<sup>16</sup> See UNESCO **Education** Convention, *supra* note 12.

<sup>17</sup> A reservation is an assertion "made by a state by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that state." Glossary, UNITED NATIONS TREATY COLLECTION, <https://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1 en.xml> [<https://perma.cc/JSY6-F6BB>].

<sup>18</sup> Under the dualist model, international treaties are not self-executing, and therefore legislation that incorporates the provisions of the treaty into domestic law must be passed for the treaty to be enforceable. See Filip Spagnoli, *The Globalization of Human Rights Law: Why Do Human Rights Need International Law?*, 14 *TEX. WESLEYAN L. REV.* 317, 332 (2008).

each treaty, the historical treatment of gender under Singaporean law, and Singapore's previous attitudes towards U.N. international human rights treaties. Part III will explain: (1) why state-level legislation addressing educational inequality will result from Singapore's dualist system, (2) theories of why Singapore would be incentivized to ratify the Convention, and (3) the driving forces that would compel Singapore to comply with the terms of the Convention. Finally, Part IV of this Note will conclude by demonstrating the significance and potential impact of Singapore's ratification on the state's human rights regime.

## II. Background

This Part will first present the substantive rights, state obligations, and relevant enforcement mechanisms for both CEDAW and the Education Convention. Next, this Part will explain Singapore's domestic sources of gender protection legislation, as well as its historical treatment of gender-related U.N. international human rights treaties. The discussion will then describe Singapore's treatment of gender-related international rights treaties in the context of the Asia-Pacific region. Finally, Singapore's dualist model of [\*507] treaty incorporation will be further explained as a backdrop for Part III.

### A. The Convention on the Elimination of All Forms of Discrimination Against Women

#### 1. Substantive Rights and State Obligations Under the Convention on the Elimination of All Forms of Discrimination Against Women

CEDAW is an international treaty designed to "reaffirm ... the dignity and worth of the human person [and] in the equal rights of men and women."<sup>19</sup> Article 2 of CEDAW explains that the Convention was established to "condemn discrimination against women in all its forms."<sup>20</sup> In order to fulfill their CEDAW obligations, state signatories agree to enact legislative measures that reduce discrimination against women, including the modification or abolition of pre-existing laws that are discriminatory towards women.<sup>21</sup> Additionally, state signatories must ensure legal protection of women's rights through "competent national tribunals," and take appropriate measures to safeguard against discrimination in both public institutions and private enterprises.<sup>22</sup>

CEDAW also addresses more specific substantive women's rights meant to be upheld by the convention.<sup>23</sup> For example, state parties are required to (1) enact legislation to eliminate the trafficking of women;<sup>24</sup>(2) conduct appropriate measures to ensure that women have an equal right to vote in political elections;<sup>25</sup>(3) ensure women are equally able to represent their state governments in international organizations;<sup>26</sup>(4) provide women with equal rights to "acquire, change or retain their nationality," regardless of marital status;<sup>27</sup>(5) eliminate discrimination against women in education through all levels of schooling, including access to the

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<sup>19</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13, 19 (entered into force Sept. 3, 1981) [hereinafter CEDAW].

<sup>20</sup> *Id.* art. 2.

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

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

<sup>23</sup> See, e.g., *id.* art. 3 (requiring measures for guaranteeing women the "exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men").

<sup>24</sup> *Id.* art. 6.

<sup>25</sup> *Id.* art. 7.

<sup>26</sup> *Id.* art. 8.

<sup>27</sup> *Id.* art. 9.

same curricula and examinations as men, the reduction of gender **[\*508]** stereotypes within **educational** materials, and providing information regarding family planning; <sup>28</sup>(6) provide equal employment opportunities; <sup>29</sup>(7) grant equal access to health care services, especially those services related to family planning; <sup>30</sup>(8) provide women with equal legal capacity, including equal rights in the civil court system and the nullification of discriminatory contracts; <sup>31</sup>and (9) equal marriage and family rights. <sup>32</sup>

To fulfill their CEDAW obligations, state signatories must aim to "achieve substantive equality rather than just formal equality." <sup>33</sup>State parties to CEDAW are required to enact anti-discrimination legislation instead of simply adding non-discriminatory, gender-neutral provisions into current law or merely abolishing discriminatory provisions of current laws. <sup>34</sup>**Singapore** ratified CEDAW in 1995 <sup>35</sup>and added a significant reservation to Article 2. <sup>36</sup>This reservation explains that **Singapore** "reserves the right not to apply the provisions of Articles 2, paragraphs (a) to (f)" due to the nation's "multiracial and multi-religious society and the need to respect the freedom of minorities to practice their religious and personal laws." <sup>37</sup>By enacting a reservation to "articles 2, paragraphs (a) to (f)," <sup>38</sup>**Singapore** originally enabled itself to reject the legal effect of the core provisions of CEDAW that called for legislative action to reduce discrimination against women. <sup>39</sup> **[\*509]** Unlike **Singapore**, many state signatories have acknowledged their CEDAW obligations by integrating anti-discrimination clauses into their national constitutions that prohibit discrimination on the basis of gender. <sup>40</sup>When these

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<sup>28</sup> *Id.* art. 10 (the right to **education** also includes equal opportunity in vocational training, continuing **education**, sports, and scholarships).

<sup>29</sup> *Id.* art. 11 (CEDAW indicates that eliminating discrimination in employment includes "the right to the same employment opportunities," the right to equal job security, compensation, benefits, and social security. Additionally, CEDAW requires that state parties adopt measures to implement appropriate, non-discriminatory maternity leave practices).

<sup>30</sup> *Id.* art. 12.

<sup>31</sup> *Id.* art. 15.

<sup>32</sup> *Id.* art. 16.

<sup>33</sup> Vedna Jivan & Christine Forster, *What Would Gandhi Say? Reconciling Universalism, Cultural Relativism and Feminism Through Women's Use of CEDAW*, 9 SING. Y.B. INT'L L. 103, 109 (2005).

<sup>34</sup> *Id.* (explaining that Australia fulfills its CEDAW obligations through the Sex Discrimination Act of 1984, in addition to a series of federal and state laws that contain anti-discrimination provisions).

<sup>35</sup> *Status of Ratification Interactive Dashboard*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM., <https://indicators.ohchr.org/> [<https://perma.cc/63T2-7TRK>].

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

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> See *Convention on the Elimination of All Forms of Discrimination Against Women*, *supra* note 12; *Glossary*, *supra* note 17 (defining a reservation as "a declaration made by a state by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that state.").

<sup>40</sup> Jivan & Forster, *supra* note 33.

CEDAW provisions are entrenched in a state's national constitution, they ordinarily can only be altered or removed through an amendment process.<sup>41</sup>

## 2. CEDAW Enforcement

CEDAW is monitored and enforced by the Committee on the Elimination on Discrimination against Women (CEDAW Committee).<sup>42</sup> One context in which the CEDAW Committee enforces the treaty is through providing recommendations based on state-level litigation. For example, in *Vertido v. Philippines*,<sup>43</sup> the President of the Chamber of Commerce was acquitted of a rape charge against a Filipino woman after an eight-year trial.<sup>44</sup> In analyzing the trial court's opinion, the CEDAW Committee found that the trial judge had enforced seven "myths and stereotypes" concerning the behavior of male sexuality and rape victims in making the determination to acquit the defendant.<sup>45</sup> For example, the trial court found that "to be raped by means of intimidation, the victim must be timid or easily cowed."<sup>46</sup> The CEDAW Committee found that the ruling was in violation of CEDAW Article 2(c),<sup>47</sup> Article 2(f),<sup>48</sup> and Article 5(a)<sup>49</sup> in conjunction with the Committee's General **[\*510]** Recommendation 19 on violence against women.<sup>50</sup> The CEDAW Committee called for the Philippines to (1) compensate Vertido, (2) enact measures aimed towards reducing "undue delay" during court proceedings involving rape, (3) protect against harmful prejudices and stereotypes during rape trials, (4) review the definition of rape in domestic legislation to ensure that it is based on a lack-of-consent theory, and (5) provide sufficient training on CEDAW to domestic judges.<sup>51</sup> The CEDAW Committee's decision in *Vertido* not only illustrates CEDAW's enforcement mechanism at the domestic level, but also demonstrates that the CEDAW Committee is willing to

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<sup>41</sup> See Elai Katz, *On Amending Constitutions: The Legality and Legitimacy of Constitutional Entrenchment*, 29 *COLUM. J.L. & SOC. PROBS.* 251, 256 (1996) ("The methods of amending constitutions range from ordinary legislation to a complex and protracted procedure that involves a series of supermajority votes.").

<sup>42</sup> CEDAW, *supra* note 19, art. 17.

<sup>43</sup> *Vertido* is used as the illustrative case for the purposes of demonstrating CEDAW's enforcement mechanism because it is "now the leading decision ... of the CEDAW Committee." Simone Cusack & Alexandra S. H. Timmer, *Gender Stereotyping in Rape Cases: The CEDAW Committee's Decision in Vertido v. the Philippines*, 11 *HUM. RTS. L. REV.* 329, 330 (2011).

<sup>44</sup> Communication No. 18/2008, at 4, U.N. Doc. CEDAW/C/46/D/18/2008 (Sept. 22, 2010).

<sup>45</sup> *Id.* at 5.

<sup>46</sup> *Id.* at 6 ( *Vertido* argued that the trial court's reasoning "perpetuated the stereotype of a rape victim, according to which women who are not timid or not easily cowed are less vulnerable to sexual attacks.").

<sup>47</sup> CEDAW, *supra* note 19, art. 2 (Article 2(c) requires states "to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination").

<sup>48</sup> *Id.* (Article 2(f) requires states "to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise").

<sup>49</sup> *Id.* art. 5 (Article 5(a) requires states "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women").

<sup>50</sup> Communication No. 18/2008, *supra* note 44, at 14-15 ("States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.").

<sup>51</sup> *Id.* at 17.

implicate state actors for gender stereotyping that violates women's substantive rights, even when the specific rights are not precisely defined within the language of CEDAW. <sup>52</sup>

## B. The U.N. Convention against Discrimination in Education

### 1. Substantive Rights and Obligations Under the Convention against Discrimination in Education

Though Singapore has ratified CEDAW, <sup>53</sup>it has not ratified the Education Convention. <sup>54</sup>The Education Convention was adopted in 1960 and came into force in 1962. <sup>55</sup>The Convention is based on the notion that the United Nations Educational, Scientific and Cultural Organization (UNESCO) "has the duty not only to proscribe any form of discrimination in education but also to promote equality of opportunity and treatment for all in education." <sup>56</sup>Similar to CEDAW, gender is a protected class under Article 1 of the [\*511] Education Convention. <sup>57</sup>There are currently 106 signatories to the Education Convention. <sup>58</sup>

The Education Convention explicitly defines the actions that state parties are requested to undertake to comply with the Education Convention's overall goal of eliminating and preventing educational discrimination. <sup>59</sup>For example, state parties commit to abrogating any domestic statutory provisions that lead to discrimination in education, and to not provide any preference in assigning public funding based on students belonging to a particular group. <sup>60</sup>Additionally, state parties are required to adopt a national policy that promotes compulsory primary education, creates an accessible secondary education system, and makes higher education equally accessible to all students on the basis of individual academic abilities. <sup>61</sup>Finally, when states ratify the Education Convention, they formally agree that education should be aimed towards promoting tolerance of all racial and religious groups, that parents have the right to choose their child's school based on religious beliefs, and that national minorities may conduct their own educational institutions in accordance with the minority language and cultural norms. <sup>62</sup>There has been very little domestic litigation among states applying the Education

<sup>52</sup> See Cusack & Timmer, *supra* note 43, at 330; Comm. on the Elimination of Discrimination Against Women, General Recommendation No 28: Core Obligations of States Parties Under Art. 2 of the Convention on the Elimination of All Forms of Discrimination Against Women, P 7, U.N. Doc. CEDAW/C/2010/47/GC.2 (2010) (explaining that "the spirit of the Convention covers other rights, which are not explicitly mentioned in the Convention but which have an impact on the achievement of equality of women with men and which represent a form of discrimination against women").

<sup>53</sup> UNITED NATIONS HUM. RTS. OFF. HIGH COMM, *supra* note 35.

<sup>54</sup> *Id.*

<sup>55</sup> Convention Against Discrimination in Education, *opened for signature* Dec. 14, 1960, 429 U.N.T.S. 93 (entered into force May 22, 1962).

<sup>56</sup> *Id.* at 94.

<sup>57</sup> *Id.* art. 1 ("For the purpose of this Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular ... of limiting any person or group of persons to education of an inferior standard.").

<sup>58</sup> UNESCO's Convention Against Discrimination in Education, UNESCO, <https://en.unesco.org/themes/right-to-education/convention-against-discrimination> [<https://perma.cc/68UW-MK92>].

<sup>59</sup> See generally Convention Against Discrimination in Education, *supra* note 55.

<sup>60</sup> *Id.* art. 3.

<sup>61</sup> *Id.* art. 4.

<sup>62</sup> *Id.* art. 5.

Convention to help define the substantive right to **education**<sup>63</sup> because the **Education** Convention is not one of the nine core international human rights [\*512] treaties identified by the United Nations Human Rights Office of the High Commissioner.<sup>64</sup>

## 2. Convention against Discrimination in **Education**: Compliance and Enforcement Measures

### i. State Reports

As with CEDAW, the **Education** Convention is a binding legal instrument that bestows legal obligations on signatories.<sup>65</sup> Due to the binding effect of the **Education** Convention, the Convention has compliance and enforcement measures in place to ensure that state parties adhere to the provisions of the treaty.<sup>66</sup> First, pursuant to Article 7, signatories to the **Education** Convention are required to submit "periodic reports" to UNESCO.<sup>67</sup> These reports must "give information on the legislative and administrative provisions which they have adopted ... including [those] taken for the formulation and the development of the national policy defined in Article 4 as well as the results achieved and the obstacles encountered in the application of that policy."<sup>68</sup> Though self-reporting requirements are a frequently-used compliance measure of international human rights treaties, these requirements have a weaker effect on compliance than enforcement mechanisms, such as independent prosecutor investigations.<sup>69</sup> Alternatively, weaker compliance measures may actually encourage more states to ratify an international treaty, because the state does not perceive the compliance measure as a "credible threat" to enforcement.<sup>70</sup>

[\*513] **Singapore** has already committed to providing state reports through its membership in UNESCO.<sup>71</sup> The UNESCO Constitution emphasizes the importance of compliance with self-reporting requirements.<sup>72</sup> Article VIII of the UNESCO Constitution specifies that member states are required to submit "reports on the laws,

<sup>63</sup> An additional reason explaining why there is very little domestic litigation applying the **Education** Convention is that parties are instead more likely to use the CRC's **education** provisions as the basis of the complaint, given that it has been ratified by almost every nation in the world. See Soo Jee Lee, *A Child's Voice vs. a Parent's Control: Resolving Tension Between the Convention on the Rights of the Child and U.S. Law*, 117 COLUM. L. REV. 687, 688 n.4, 691 n.21 (2017) (the United States is the only nation that has not ratified the CRC).

<sup>64</sup> See *The Core International Human Rights Instruments and Their Monitoring Bodies*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM., <https://www.ohchr.org/en/professionalinterest/pages/coreinstruments.aspx> [<https://perma.cc/R252-T5Z2>] (listing the nine core international human rights treaties and explaining that each treaty "established a committee of experts to monitor implementation of the treaty provisions by its States parties").

<sup>65</sup> UNESCO's Convention Against Discrimination in **Education**, *supra* note 58.

<sup>66</sup> See, e.g., Convention Against Discrimination in **Education**, *supra* note 55, art. 7.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* art. 4 (Article 4 asks that states "develop and apply a national policy" that promotes "equality of opportunity and of treatment in the matter of **education**," such as "free and compulsory" primary **education**, accessible secondary **education** and higher **education**, and nondiscriminatory educator training).

<sup>69</sup> See Yvonne M. Dutton, *Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms*, 34 U. PA. J. INT'L L. 1, 34 (2012).

<sup>70</sup> *Id.* at 45 (finding that states with less progressive human rights practices are "regularly joining treaties with the weakest enforcement mechanisms," because they "likely know they cannot be punished for bad and noncompliant behavior").

<sup>71</sup> *Member States List*, UNESCO, <https://en.unesco.org/countries/s> [<https://en.unesco.org/countries/s>].

regulations and statistics relating to its **educational** ... institutions and activities." <sup>73</sup>UNESCO has developed subsidiary bodies tasked with analyzing the state reports because state reports are a constitutionally mandated enforcement mechanism. <sup>74</sup>As a member state of UNESCO, <sup>75</sup>**Singapore** must comply with any reporting requirements of international treaties it joins to fulfill its constitutional obligations.

## ii. Methods of Dispute Resolution

When a dispute arises between state parties to the **Education** Convention, there are two main methods of dispute resolution: the International Court of Justice (ICJ) and the Conciliation and Good Offices Commission. <sup>76</sup>Pursuant to Article 8, the ICJ has jurisdiction to hear disputes between signatories to the **Education** Convention in the event that negotiations or other dispute resolution methods do not resolve the dispute. <sup>77</sup>In addition to the ICJ, a U.N. Conciliation and Good Offices Commission exists to resolve inter-state disputes "concerning the interpretation or application of [the Convention against Discrimination in **Education**]." <sup>78</sup>As discussed in Part III, the methods of dispute resolution available to **Singapore** through the **Education** Convention will likely have an **[\*514]** effect on the state's willingness to ratify the Convention and its willingness to comply with the terms of the Convention.

## C. Historical Treatment of Gender Under Singaporean Law: Domestic Sources of Gender Protection and Legislation

An analysis of **Singapore's** treatment of gender within the state's legal regime provides insight into one potential source for the gender-based disparity in **educational** outcomes. Under the Equal Protection Clause of the Constitution of **Singapore**, "all persons are equal before the law and entitled to the equal protection of the law." <sup>79</sup>However, only religion, race, national origin, and birthplace are protected classes under the Equal Protection Clause of **Singapore's** Constitution; gender is not a protected class. <sup>80</sup>The Constitution's lack of protections on the basis of gender has historically opened the door for the Singaporean government to administer a more limited women's rights regime. <sup>81</sup>For example, marital rape was not recognized in **Singapore** until 2007, when

<sup>72</sup> See Constitution of the United Nations **Educational**, Scientific and Cultural Organization art. 8, Sept. 30, 1946, [61 Stat. 2495](#), 4 U.N.T.S. 52 [hereinafter UNESCO Constitution]; Kishore Singh, *UNESCO's Convention Against Discrimination in Education (1960): Key Pillar of the Education for All*, 4 INT'L J. **EDUC.** L. & POL'Y 70, 75 (2008).

<sup>73</sup> UNESCO Constitution, *supra* note 72, art. 8.

<sup>74</sup> Singh, *supra* note 72 (The United Nations **Educational**, Scientific and Cultural Organization's (UNESCO's) Committee on Conventions and Recommendations oversees the execution of UNESCO's instruments, which includes state reports on the "implementation of conventions").

<sup>75</sup> *Member States List*, *supra* note 71.

<sup>76</sup> Singh, *supra* note 72, at 83.

<sup>77</sup> U.N. Convention Against Discrimination in **Education**, *supra* note 55, art. 8.

<sup>78</sup> Singh, *supra* note 72, at 83 (quoting Article 8 of the Convention against Discrimination in **Education**); Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking the Settlement of Any Disputes Which May Arise Between States Parties to the Convention Against Discrimination in **Education**, *opened for signature* Nov. 10, 1962, 651 U.N.T.S. 362 (entered into force Oct. 24, 1968) [hereinafter Conciliation Protocol].

<sup>79</sup> CONSTITUTION OF THE REPUBLIC OF **SINGAPORE**, art. 12, § 1.

<sup>80</sup> See *id.* art. 12, § 2.

<sup>81</sup> See *World Report 2019: Rights Trends in Singapore*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2019/country-chapters/singapore> [<https://perma.cc/N53P-VY7A>] (explaining that **Singapore** has a "poor human rights record.").

the Penal Code was amended to only cover the narrow set of circumstances when the act occurred while the marriage was dissolving or if divorce proceedings had already commenced.<sup>82</sup> It was not until 2020 that marital immunity was completely removed from the Penal Code.<sup>83</sup> Though Singapore's treatment of marital rape is one example of the gender inequity under Singapore's statutory law, it demonstrates the legal standards that are constitutionally permissible when gender is not a protected class.<sup>84</sup>

An additional example of gender discrimination in Singapore that results from a lack of constitutional protection derives from the state's maternity leave laws. Under the Employment Act, a woman must be lawfully married to the child's natural father in [\*515] order to qualify for the full sixteen weeks of maternity leave.<sup>85</sup> If the woman is not married to the child's natural father, she may qualify for twelve weeks of maternity leave if she is not an executive, manager, domestic worker, civil service employee, or an employee earning a salary of greater than \$ 2,000 per month.<sup>86</sup> However, if the woman serves in any of these roles, she is not entitled to maternity leave.<sup>87</sup> Singapore's constitutional and statutory regimes create obstacles that increase the difficulty of remedying the state's gender inequity.

#### D. Singapore's Treatment of State Party Obligations Under CEDAW Compared to Other Asia-Pacific States

Several states in the Asia-Pacific region have incorporated gender anti-discrimination clauses into their national constitutions, including India, South Korea, Fiji, Nepal, Vietnam, and New Zealand.<sup>88</sup> However, Singapore has yet to follow suit,<sup>89</sup> and therefore the CEDAW Committee has repeatedly recommended that Singapore add an anti-gender discrimination clause to its constitution.<sup>90</sup> In its most recent report, the CEDAW Committee noted that its concern is rooted in the Singapore Court of Appeal's 2014 decision in *Lim Meng Suang v. Attorney General*, in which the Court held that Article 12(2)<sup>91</sup> of the Singapore Constitution only protects against discrimination on grounds explicitly listed within the Constitution, and therefore does not prohibit discrimination on the basis of gender.<sup>92</sup> Though the Committee has indicated that Singapore [\*516] is making progress

<sup>82</sup> See Rahimah Rashith, *Husbands May No Longer Have Marital Immunity for Rape*, STRAITS TIMES, <https://www.straitstimes.com/singapore/husbands-may-no-longer-have-marital-immunity-for-rape> [<https://perma.cc/34F3-L3D4>].

<sup>83</sup> See Penal Code (2008) § 375 (Sing.), *amended by* Penal Code Amendment Act No. 15 (2019), § 375 (Sing.).

<sup>84</sup> An additional example is that corporal punishment of women is legal under both Singapore's Penal Code and Women's Charter. See Comm. on the Elimination of Discrimination Against Women, Concluding Observations on the Fifth Periodic Rep. of Sing. P 20, U.N. Doc. CEDAW/C/SGP/CO/5 (Nov. 21, 2017) [hereinafter Concluding Observations].

<sup>85</sup> SAYONI, REPORT ON DISCRIMINATION AGAINST WOMEN IN SINGAPORE BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY 8 (2011), <https://cedaw.sayoni.com/wp-content/uploads/2017/10/Sayoni-2011-CEDAW-Shadow-Report.pdf> [<https://perma.cc/U4K7-GYYQ>].

<sup>86</sup> See *id.*

<sup>87</sup> See *id.* at 9 (providing a recommendation that Singapore provide the same maternity benefits regardless of marital status).

<sup>88</sup> Jivan & Forster, *supra* note 33, at 109-10.

<sup>89</sup> CONSTITUTION OF THE REPUBLIC OF SINGAPORE art. 12, § 2.

<sup>90</sup> Concluding Observations, *supra* note 84, PP 10-11 ("The Committee reiterates its previous recommendations ... that the State party incorporate into its Constitution or other appropriate legislation a definition of discrimination against women and provisions to prohibit all forms of discrimination against women, encompassing direct and indirect discrimination in the private and public spheres as well as intersecting forms of discrimination against women, in line with article 1 of the Convention.").

<sup>91</sup> CONSTITUTION OF THE REPUBLIC OF SINGAPORE art. 12, § 2 (Article 12(2) states that "... there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law").

towards fulfilling its CEDAW obligations,<sup>93</sup> its reservation to CEDAW Article 2(a)-(f) and lack of constitutional protection against gender discrimination demonstrate that Singapore has not fully satisfied its CEDAW obligations.<sup>94</sup>

Treaties and conventions are not automatically incorporated into Singaporean statutory law unless specific legislation is passed that authorizes their incorporation.<sup>95</sup> A party cannot raise the provisions of an international treaty or convention in Singapore's courts.<sup>96</sup> The lack of application of international treaties in Singapore differs significantly from other states in the Asia-Pacific region, where CEDAW may be automatically invoked to challenge cultural norms and enforce women's rights in domestic courts.<sup>97</sup> For example, the Indian Supreme Court invoked CEDAW in determining that the Hindu Succession Act of 1956 should be interpreted to grant equal property succession rights to men and women.<sup>98</sup> The Court noted that "Article 2(e) of CEDAW enjoins the Supreme Court to breathe life into the dry bones of the [Indian] Constitution."<sup>99</sup> Additionally, the Court stated that even India's reservations to CEDAW did not preclude its finding that the Hindu Succession Act violated India's CEDAW obligations because those reservations were contradicted by other CEDAW provisions as well as the Indian Constitution.<sup>100</sup>

In addition to enforcing CEDAW through their domestic court systems, state parties to the Education Convention from the Asia-Pacific region have also passed new legislative reforms and constitutional amendments to meet their CEDAW obligations. For example, the Philippines passed the 2009 Magna Carta of Women, a far-reaching women's human rights law that aims to prohibit gender- [\*517] based discrimination by identifying and advancing the rights of Filipino women.<sup>101</sup> One aim of the Magna Carta is to eliminate discrimination in education by removing gender stereotypes from educational materials and using gender-sensitive language.<sup>102</sup> The language of the Magna Carta explicitly mentions that the Magna Carta was passed to fulfill the state's CEDAW obligations.<sup>103</sup> Additionally, Thailand amended its Constitution in both 1997 and 2007 to fulfill its CEDAW

<sup>92</sup> See *Lim Meng Suang v. Attorney General*, [2014] SGCA 53 (finding that the Singapore Constitution protects against discrimination on the basis of religion, race, descent, or place of birth because those grounds have been explicitly incorporated into the language of the Constitution).

<sup>93</sup> See Concluding Observations, *supra* note 84, PP 4-6 (acknowledging that Singapore has enacted five new laws, ratified an international treaty, and changed its domestic policies to promote gender equality).

<sup>94</sup> *Id.* PP 8, 10.

<sup>95</sup> MINISTRY OF CMTY. DEV., REPUBLIC OF SING., SING'S. INITIAL REP. TO THE U.N. COMM. FOR THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 9 (2000).

<sup>96</sup> *Id.*

<sup>97</sup> See Jivan & Forster, *supra* note 33, at 114.

<sup>98</sup> See *C. Masilamani Mudaliar and Others v. Idol Sri Swaminathaswami Swaminathaswami Thirukoil and Others*, 8 S.C.R. 525 (1996).

<sup>99</sup> *Id.* (Article 2(e) of CEDAW requires states parties "to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise").

<sup>100</sup> See *id.*

<sup>101</sup> ANN WARNER, INT'L CTR. FOR RSCH. ON WOMEN, RECOGNIZING RIGHTS PROMOTING PROGRESS: THE GLOBAL IMPACT OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 12 (2010), <https://www.icrw.org/wp-content/uploads/2016/10/Recognizing-Rights-Promoting-Progress-CEDAW.pdf> [<https://perma.cc/AM46-RXV6>].

<sup>102</sup> An Act Providing for the Magna Carta of Women, Rep. Act No. 9710, § 13 (2009) (Phil.).

obligations. <sup>104</sup>The Thai Constitution now features a provision that states that "men and women shall enjoy equal rights." <sup>105</sup>The Constitution also contains a clause that condemns violence against women and a provision that mandates that the Thai government "shall take into account the different necessities and needs with respect to genders" when making decisions pertaining to budget allocation. <sup>106</sup>

Unlike in other Asia-Pacific states such as Thailand and the Philippines, in Singapore women's rights are protected by legislative acts designed to combat gender discrimination in relatively narrow areas. <sup>107</sup>For example, Singapore has expanded the scope of protections granted to married and divorced women through the 2016 amendment of the Women's Charter Act. <sup>108</sup>Additionally, Singapore recently passed the Protection from Harassment Act, which increases protection from harassment "within and outside the workplace." <sup>109</sup>Though the CEDAW Committee has commended Singapore on its recent legislative reforms, <sup>110</sup>the lack of a constitutional provision prohibiting gender discrimination and the lack of an all-encompassing anti-gender discrimination statute remain a **[\*518]** significant concern for the Committee and differentiates Singapore from many of its Asia-Pacific counterparts. <sup>111</sup>

#### E. Effects of International Human Rights Treaties on State-Level Judicial Outcomes and Legislative Action

Though international human rights treaties are valuable for norm-setting purposes, questions remain regarding their effectiveness on enforcing substantive rights at the state level. In deciding the extent to which international law should be incorporated into domestic law, states generally adopt either the monist or dualist approach. <sup>112</sup>Monist states adopt the view that there exists one overall legal body encompassing both international law and domestic law, and that "international law is integrated into domestic law from its moment of inception." <sup>113</sup>Under the monist view, when a state ratifies an international treaty a domestic judge can apply international law without that law being officially written into the state's constitution or additional domestic statutes. <sup>114</sup>Conversely, under the dualist approach, domestic law and international law act as two distinct legal entities and

<sup>103</sup> *Id.* § 2 ("The State condemns discrimination against women in all its forms and pursues by all appropriate means and without delay the policy of eliminating discrimination against women in keeping with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international instruments consistent with Philippine law.").

<sup>104</sup> WARNER, *supra* note 101, at 13.

<sup>105</sup> THAILAND CONSTITUTION OF 2017, § 27.

<sup>106</sup> *Id.* § 71.

<sup>107</sup> See Concluding Observations, *supra* note 84, P 4.

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

<sup>109</sup> *Id.*

<sup>110</sup> See *id.*

<sup>111</sup> *Id.* P 10.

<sup>112</sup> See Markus G. Puder, *Guidance and Control Mechanisms for the Construction of Un-System Law - Sung and Unsung Tales from the Coalition of the Willing, or Not*, 121 PENN ST. L. REV. 143, 169 (2016).

<sup>113</sup> *Id.* at 170 (citing GEORG DAHM, JOST DELBRUCK & RUDIGER WOLFRUM, VOLKERRECHT99 (1988)).

<sup>114</sup> Spagnoli, *supra* note 18, at 332.

require the international law to be translated into the domestic constitution or body of statutes in order to be legally enforceable.<sup>115</sup>

Recent cases in Singaporean federal courts indicate that Singapore adopts the dualist model.<sup>116</sup> In *Yong Vui Kong v. Public Prosecutor*, the Court of Appeal of Singapore (the state's highest federal court) considered whether the mandatory death penalty required by the Misuse of Drugs Act was permissible under Article 9(1) of Singapore's Constitution.<sup>117</sup> The Court rejected the appellant's argument that customary international law's prohibition on the mandatory death penalty would preclude the mandatory death penalty provision of the Act from being considered a "law" under Article 9(1) of the Constitution.<sup>118</sup> In reaching this conclusion, the Court stated that "in order for [Singaporean] courts to give full effect to international human rights norms, it would be necessary for Parliament to first enact new laws ... or even amend the Singapore Constitution to expressly provide for rights which have not already been incorporated therein."<sup>119</sup> The Court's holding seemed to be an annunciation of the dualist regime in Singapore.<sup>120</sup> Singapore's adoption of dualism was confirmed in *Lim Meng Suang v. Attorney General* in 2014, when the Court held that even Singapore's ratification of CEDAW did not automatically extend Article 12(2) of the Singapore Constitution to protect against discrimination on the basis of gender.<sup>121</sup><sup>122</sup>

### III. Analysis

This Note argues that ratification of the Education Convention will likely lead to state-level legislative action in Singapore that will remedy Singapore's educational gender gap. However, this Note will not argue that the *only* way for a state to reduce its educational gender gap is to ratify the Education Convention.<sup>124</sup> Rather, this

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<sup>115</sup> See *id.* at 333 (finding that when "a state accepts a treaty but does not adapt its national law in order to conform to the treaty or does not create a national law explicitly incorporating the treaty, then it violates international law").

<sup>116</sup> See Siyuan Chen, *The Relationship Between International Law and Domestic Law: Yong Vui Kong v. PP*, 23 SING. ACAD. L.J. 350, 361 (2011); Li-Ann Thio, *The Death Penalty as Cruel and Inhuman Punishment Before the Singapore High Court? Customary Human Rights Norms, Constitutional Formalism and the Supremacy of Domestic Law in Public Prosecutor v. Nguyen Tuong Van*, 4 OXFORD U. COMMONWEALTH L.J. 213, 223 (2004); Simon Tay, *The Singapore Legal System and International Law: Influence or Interference?*, in *THE SINGAPORE LEGAL SYSTEM* 467, 472 (Kevin Tan ed., 2d ed. 1999).

<sup>117</sup> CONSTITUTION OF THE REPUBLIC OF SINGAPORE, art. 9, § 1 ("No person shall be deprived of his life or personal liberty save in accordance with law.").

<sup>118</sup> See *Yong Vui Kong v. PP* [2010] SGCA 20, P59.

<sup>119</sup> See *id.* P 56 (in support of his claim, appellant argued that the Universal Declaration of Human Rights' prohibition on "torture ... cruel, inhuman or degrading treatment or punishment" demonstrated international human rights norms that should be used in interpreting the Singapore Constitution).

<sup>120</sup> *Id.* P 59.

<sup>121</sup> See Siyuan Chen, *supra* note 116, at 361; *Yong Vui Kong v. PP* [2010] SGCA 20 (reasoning that "where our courts have reached the limits on the extent to which they may properly have regard to international human rights norms in interpreting the Singapore Constitution, it would not be appropriate for them to legislate new rights into the Singapore Constitution under the guise of interpreting existing constitutional provisions").

<sup>122</sup> CONSTITUTION OF THE REPUBLIC OF SINGAPORE art. 12, § 2 (Article 12(2) states that "... there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law").

<sup>123</sup> See *Lim Meng Suang*, [2014] SGCA 53, P 182.

Note will first demonstrate that Singapore's dualist model of treaty incorporation combined with the Education Convention's obligations will lead to an increase in state-level legislation addressing the [\*520] educational gender gap. Second, this Part will use the economic development theory of treaty ratification, as well as the low costs of ratifying and complying with the Education Convention, to explain why Singapore is incentivized to ratify the Education Convention. Third, this Part will explain why the high reputational costs of noncompliance increase the likelihood that Singapore will comply with the Education Convention.

#### A. Singapore's Dualist System and Convention Legislation Requirements Will Increase Domestic Legislation Aimed at Reducing Educational Inequality

Ratification of the Education Convention would have a significant positive impact on Singapore's educational gender gap for two reasons. First, the compliance and procedural requirements of the Education Convention incentivize legislative action regarding gender discrimination. Second, Singapore's dualist model of treaty incorporation coupled with the Education Convention's legislation requirement will increase the level of domestic legislation enacted to reduce Singapore's educational attainment gender gap.

##### 1. The Convention's Lack of Reservations and State Reporting Requirements Will Lead to Singapore's Compliance

The compliance and procedural requirements of the Education Convention will increase the likelihood that ratification of the Education Convention will improve Singapore's educational attainment gender gap. First, pursuant to Article 9, reservations to the Education Convention are not permitted.<sup>125</sup> The prohibition on reservations differs from CEDAW, in which Singapore has enacted reservations that have allowed it to exclude the legal effects of many of the treaty's provisions.<sup>126</sup> Because Singapore cannot make reservations to the Education Convention, it would not be able to exclude the legal effect of any of the Education Convention's provisions.<sup>127</sup> Singapore would therefore be required to take legislative action that complies with all provisions of the Education Convention.

Second, the Education Convention's self-reporting requirement in Article 7 mandates that states provide "periodic reports" on the "legislative and administrative" actions the a state has taken to comply [\*521] with the Education Convention.<sup>128</sup> Despite its refusal to participate in other norms related to *ratification* of CEDAW, since ratifying the treaty Singapore has largely demonstrated compliance with their reporting requirements.<sup>129</sup> Therefore, Singapore is likely to continue compliance with the reporting requirements of the Education Convention after the initial hurdle of ratification.

<sup>124</sup> For example, the World Economic Forum has indicated that Austria is ranked first in the world in educational attainment gender gap, see WORLD ECON. F., *supra* note 5, but Austria is not a signatory to Education Convention, see UNESCO Education Convention, *supra* note 12.

<sup>125</sup> Convention Against Discrimination in Education, *supra* note 55, art. 9.

<sup>126</sup> UNESCO Education Convention, *supra* note 12; CEDAW, *supra* note 19.

<sup>127</sup> *Glossary*, *supra* note 17.

<sup>128</sup> Convention Against Discrimination in Education, *supra* note 55, art. 7.

<sup>129</sup> See generally Comm. on the Elimination of Discrimination Against Women, Consideration of Reps. Submitted by States Parties Under Art. 18 of the Convention (Sing.), U.N. Doc. CEDAW/C/SGP/5 (Nov. 2015) [hereinafter 2015 Consideration Under Art. 18]; Comm. on the Elimination of Discrimination Against Women, Consideration of Reps. Submitted by States Parties Under Art. 18 of the Convention (Sing.), U.N. Doc. CEDAW/C/SGP/4 (Apr. 2009); Comm. on the Elimination of Discrimination Against Women, Consideration of Reps. Submitted by States Parties Under Art. 18 of the Convention (Sing.), U.N. Doc. CEDAW/C/SGP/3 (Nov. 2004); Comm. on the Elimination of Discrimination Against Women, Consideration of Reps. Submitted by States Parties Under Art. 18 of the Convention (Sing.), U.N. Doc. CEDAW/C/SGP/2 (Apr. 2001); Comm. on the Elimination of Discrimination Against Women, Consideration of Reps. Submitted by States Parties Under Art. 18 of the Convention (Sing.),

## 2. The Convention Reporting Requirements and Singapore's Dualist System Will Increase the Effect of the Education Convention on State-Level Judicial Outcomes and Legislative Action

Though an initial analysis of the Court's holding in *Yong Vui Kong* and *Lim Meng Suang* would suggest that the dualist model would hinder the Education Convention's legal effect in Singapore,<sup>130</sup> a deeper focus on these cases sheds light on the potential effectiveness of the Education Convention on Singapore's educational attainment gender gap. First, Singapore is likely to enact domestic legislation addressing substantive equality for two main reasons: 1) Singapore's dualist model precludes Singaporean courts from incorporating the terms of the Education Convention into their determinations of law,<sup>131</sup> and 2) the Education Convention requires state signatories to enact legislation to address discrimination in educational institutions.<sup>132</sup> If Singapore were a monist state, it would be less likely to pass new legislation because it would be able to loosely justify its compliance of the Education Convention with court rulings that enforce educational equality. Unlike court rulings, which would enforce substantive educational equality through judicial precedent, passing new legislation would [\*522] have a significantly greater effect on educational equality because it would be codified as a statute.<sup>133</sup>

Second, litigation arising out of gender discrimination in education will alert the UNESCO Committee on Conventions and Recommendations<sup>134</sup> to make a recommendation to Singapore to uphold its Convention requirement of enacting legislation promoting equality in education.<sup>135</sup> This is likely to occur because the CEDAW Committee already proposed a constitutional amendment prohibiting gender discrimination, citing *Lim Meng Suang*.<sup>136</sup> Because Singapore has demonstrated increased attention to the reputational costs associated with substandard human rights treatment,<sup>137</sup> the state would be more likely to enact legislation prohibiting gender discrimination (or even pass a constitutional amendment adding gender as a protected class under Article 12) if it more frequently received recommendations from multiple United Nations committees.<sup>138</sup>

Third, as demonstrated by both *Yong Vui Kong* and *Lim Meng Suang*, international human rights treaties provide a vehicle through which interested parties can bring oppressive human rights regimes into the public domain.<sup>139</sup> One of the main justifications of the dualist model advanced by the Singapore Court of Appeal is that the legislature may pass a constitutional amendment to reflect the state's social mores which "may ... and often will [ ] change over time."<sup>140</sup> In *Lim Meng Suang*, the Court made it a point to contrast the Constitution of

U.N. Doc. CEDAW/C/SGP/1 (Dec. 1999) (Singapore has filed reports to the CEDAW Committee in 1999, 2001, 2004, 2009, and 2015).

<sup>130</sup> See Siyuan Chen, *supra* note 116, at 361; Filip Spagnoli, *supra* note 18, at 332.

<sup>131</sup> Filip Spagnoli, *supra* note 18, at 332.

<sup>132</sup> Convention Against Discrimination in Education, *supra* note 55, art. 3.

<sup>133</sup> See Tzi Yong 'Sam' Sim, *A Guide to the Singapore Legal System and Legal Research*, HAUSER GLOB. L. SCH. PROGRAM, <https://www.nyulawglobal.org/globalex/Singapore.html> [<https://perma.cc/5VHG-SFVP>] (explaining that as a common law system, the body of law in Singapore is built incrementally through *stare decisis*).

<sup>134</sup> See Singh, *supra* note 72, at 71 n.7 (providing examples of prior education-related UNESCO recommendations).

<sup>135</sup> See Convention Against Discrimination in Education, *supra* note 55, art. 3.

<sup>136</sup> *UN Experts Repeat Call for Laws to Enshrine Gender Equality in Singapore*, SING. CEDAW COAL. (Nov. 22, 2017), <https://sgcedawcoalition.wordpress.com/2017/11/22/un-experts-repeat-call-for-laws-to-enshrine-gender-equality-in-singapore> [<https://perma.cc/2KTY-W7CU>].

<sup>137</sup> See discussion of reputational cost theory *infra* Part III.B.2.

<sup>138</sup> BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS 177 (2009).

<sup>139</sup> See generally *Lim Meng Suang*, [2014] SCGA 53; *Yong Vui Kong*, [2010] SCGA 20.

**Singapore**, which lacks protection on the basis of gender, with the Constitutions of both Malaysia and India, which each contain express provisions that protect against discrimination on the basis of gender.<sup>141</sup> As Singaporean [\*523] women continue to gain access to economic participation and opportunity,<sup>142</sup> they will continue to influence the social mores of **Singapore**. Therefore, as the Court of Appeal continuously hears cases in which arguments for gender equality are advanced under the **Education** Convention, the Court will continue to bring attention to **Singapore's** changing societal values, and that the Singaporean constitution stands in stark contrast to other neighboring states.<sup>143</sup>

#### B. **Singapore** is Likely to Ratify the U.N. Convention against Discrimination in **Education**

This Section will focus on the domestic and international factors that provide incentives for **Singapore** to ratify the **Education** Convention. First, the economic development theory of treaty ratification<sup>144</sup> will be used to demonstrate why **Singapore** is likely to ratify the Convention. Second, this Section will demonstrate how the reporting requirements of the **Education** Convention are likely to induce **Singapore** to ratify the **Education** Convention because these requirements entail low long-term compliance costs. Third, this Section will explain how the **Education** Convention's dispute resolution mechanisms constitute a low barrier to entry into the **Education** Convention for **Singapore**.

##### 1. **Singapore's** Economic Development Indicates that Ratification is Likely

**Singapore's** level of economic development demonstrates that ratification of the **Education** Convention is a significant probability.<sup>145</sup> Generally, citizens of economically-developed states want the state to take a "progressive" stance on the international stage and support the advancement of human rights.<sup>146</sup> State governments find it appealing to ratify international human rights [\*524] treaties because it allows the state to demonstrate to their constituencies that the state is committed to the promotion of human rights without a radical modification to its domestic law.<sup>147</sup> As Yvonne Dutton writes, "a state's likelihood of ratifying human rights treaties increases as the level of development and their citizens' awareness of human rights increases."<sup>148</sup> Further, empirical research of certain treaties demonstrates that states "positively influence" other states at "similar levels of economic development" to ratify those treaties.<sup>149</sup>

<sup>140</sup> *Lim Meng Suang*, [2014] SCGA 53, P 92.

<sup>141</sup> *See id.* PP 95-97.

<sup>142</sup> WORLD ECON. F., *supra* note 5, at 309-10.

<sup>143</sup> *Lim Meng Suang*, [2014] SCGA 53, PP 95-97.

<sup>144</sup> *See* Christine Min Wotipka & Kiyoteru Tsutsui, *Global Human Rights and State Sovereignty: State Ratification of International Human Rights Treaties, 1965-2001*, 23 SOCIO. F. 724, 737 (2008).

<sup>145</sup> The World Bank explains that **Singapore** "rapidly developed from a low-income country to a high-income country" after the state gained independence in 1965. *The World Bank in Singapore*, WORLD BANK, <https://www.worldbank.org/en/country/singapore/overview> [<https://perma.cc/4VNE-QHST>]. For example, GDP growth in **Singapore** "has been amongst the world's highest," with a 7.7% average annual increase since independence. *Id.*

<sup>146</sup> *See* Wotipka & Tsutsui, *supra* note 144, at 737. This Note will refer to Wotipka and Tsutsui's theory as "the economic development theory."

<sup>147</sup> *Id.*

<sup>148</sup> Dutton, *supra* note 69, at 17 n.42 (summarizing the hypothesis advanced by Wotipka and Tsutsui). Dutton uses GDP per capita as a measure of economic development. *Id.* at 39 (citing BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS 83-84 tbl.3.1 (2009)) (explaining that "GDP per capita is a standard control variable in cross-national research and is used as a proxy for a country's general level of economic development").

**Singapore** is likely to ratify the **Education** Convention based on its high level of economic development. The United Nations' Human Development Index <sup>150</sup> ranks **Singapore** as the ninth-highest state in overall human development, and **Singapore** is the state with the third-highest gross national income per capita in the world. <sup>151</sup> Despite its substantial **educational** attainment gender gap, **Singapore's** female economic participation and opportunity is nearing gender parity, ranking twentieth in the world. <sup>152</sup> Under the economic development theory of treaty ratification, it is likely that continued female economic participation, combined with a high gross national income, will lead to **Singapore** ratifying more international human rights treaties in the near future. <sup>153</sup>

The theory that economic development translates to a higher rate of treaty ratification is supported by **Singapore's** recent willingness to engage in international human rights treaties. For example, it recently ratified the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 2017, **[\*525]** after refusing to adopt for more than fifty years. <sup>154</sup> **Singapore's** recent ratification of CERD demonstrates that it is willing to ratify treaties that it previously refused to ratify for years and may signify a shift in **Singapore's** human rights regime due to the state's economic development. <sup>155</sup>

## 2. Convention Reporting Requirements Indicate Low Compliance Costs

Even in the absence of proven academic results stemming from the **Education** Convention, **Singapore** would have incentives to ratify the **Education** Convention. First, the reporting requirements of the **Education** Convention represent a low burden for **Singapore** to fulfill in its compliance with the **Education** Convention. <sup>156</sup> In analyzing whether to ratify an international human rights treaty, "[strategic ratifiers] trade off the short-term certainty of positive ratification benefits against the long-run and uncertain risk that they may face compliance costs in the future." <sup>157</sup> Regardless of **Singapore's** perceived short-term benefits of ratifying the **Education** Convention, state reports do not represent significant long-term compliance costs in comparison to other enforcement instruments such as treaty committees visiting a state party or independent prosecutor investigations. <sup>158</sup> Empirical research demonstrates that even states with "poor human rights records" consistently ratify

<sup>149</sup> Benjamin W. Campbell et al., *Latent Influence Networks in Global Environmental Politics*, PLOS ONE, Mar. 7, 2019, at 1, 8.

<sup>150</sup> *About Human Development*, UNITED NATIONS DEV. PROGRAMME, <http://www.hdr.undp.org/en/humandev> [<https://perma.cc/8FUL-FJRW>] (The Human Development Index (HDI) is "a measure of achievement in the basic dimensions of human development across countries." It is "an average of a nation's longevity, **education** and income and is widely accepted in development discourse.").

<sup>151</sup> UNITED NATIONS DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2019, at 300 (2019) (the main factors that comprise each state's HDI score are: "life expectancy at birth," "expected years of schooling," "mean years of schooling," and "gross national income per capita").

<sup>152</sup> WORLD ECON. F., *supra* note 5, at 309.

<sup>153</sup> Wotipka & Tsutsui, *supra* note 144, at 737.

<sup>154</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, UNITED NATIONS TREATY COLLECTION <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg=no=IV-2&chapter=4&clang=en> [<https://perma.cc/9FNE-GV6N>].

<sup>155</sup> See Wotipka & Tsutsui, *supra* note 144, at 737.

<sup>156</sup> See Dutton, *supra* note 69, at 34, 54 (explaining that state reports are the "weakest" compliance measure and pose less of a "credible threat" than other enforcement mechanisms of international human rights treaties).

<sup>157</sup> SIMMONS, *supra* note 138, at 58.

<sup>158</sup> See Dutton, *supra* note 69, at 34.

international human rights treaties that employ the weakest enforcement instruments.<sup>159</sup> Therefore, **Singapore** is more likely to ratify the **Education** Convention because the self-reporting requirement is one of the lowest barriers to entry when compared to other treaty enforcement mechanisms.<sup>160</sup>

[\*526]

3. Dispute Resolution Mechanisms of the **Education** Convention Do Not Pose a "Credible Threat" <sup>161</sup>to State Sovereignty

The dispute resolution mechanisms of the **Education** Convention provide additional incentives for **Singapore** to ratify. Given previous contention between other states and **Singapore** in the context of ratifying international human rights treaties,<sup>162</sup> it is likely that **Singapore** would be involved in a dispute with another signatory to the **Education** Convention. However, it is unlikely that **Singapore** would perceive the potential litigation costs and unfavorable ICJ rulings as a "credible threat" to its sovereignty.<sup>163</sup> Though the ICJ has had jurisdiction to hear disputes between Convention signatories since the treaty's inception in 1960,<sup>164</sup> the Court has never actually heard a case arising from the **Education** Convention.<sup>165</sup> Additionally, the ICJ's requirement that both state parties consent to the ICJ's jurisdiction over the dispute prior to litigation<sup>166</sup> grants **Singapore** the option of not consenting even if another state party sought to bring a complaint against **Singapore**. Therefore, the ICJ's lack of influence over Convention disputes may entice **Singapore** to be a "strategic ratifier" of the **Education** Convention, leading the state to accept the **Education** Convention's terms because the short-term benefits of ratification outweigh any long-term reputational costs that come with engaging in ICJ disputes.<sup>167</sup>

Additionally, it is unlikely that **Singapore** would perceive the Conciliation and Good Offices Commission as a "credible threat," thereby increasing the likelihood of ratification.<sup>168</sup> The Conciliation and Good Offices Commission has never heard a dispute.<sup>169</sup> Though **Singapore** may consider the underutilization of the Conciliation **[\*527]** and Good Offices Commission as an indicator that the Commission is not a viable dispute resolution device, the lack of disputes settled by the Commission will likely incentivize **Singapore** to ratify the **Education** Convention rather than have a deterrent effect. Given other countries' perceptions of **Singapore** in the context of international human rights treaties,<sup>170</sup> **Singapore** is more likely to appear in front of the

<sup>159</sup> *Id.* at 54.

<sup>160</sup> See *id.*; BETH A. SIMMONS, *supra* note 138, at 64 ("Some governments commit [to treaties] even if they are ambivalent to the treaty contents if they believe that the risk of facing compliance pressures is low enough.")

<sup>161</sup> *Id.* at 24.

<sup>162</sup> See *Convention on the Rights of the Child*, *supra* note 12 (when **Singapore** ratified the CRC, Belgium, Finland, and Germany filed objections to **Singapore**'s reservations, arguing that those reservations undercut the purpose of the Convention's terms).

<sup>163</sup> Dutton, *supra* note 69, at 24.

<sup>164</sup> *Treaties*, INT'L CT. JUST., <https://www.icj-cij.org/en/treaties> [<https://www.icj-cij.org/en/treaties>].

<sup>165</sup> See *List of All Cases*, INT'L CT. JUST., <https://www.icj-cij.org/en/list-of-all-cases> [<https://www.icj-cij.org/en/list-of-all-cases>] (of the 176 cases the ICJ has presided over, none have involved the **Education** Convention).

<sup>166</sup> Singh, *supra* note 72 at 83.

<sup>167</sup> SIMMONS, *supra* note 138, at 58 ("strategic ratification makes sense only in contexts in which the likelihood that a government's commitment will be exposed as strategic is low.")

<sup>168</sup> Dutton, *supra* note 69, at 24.

<sup>169</sup> ABDULQAWI YUSUF, STANDARD-SETTING IN UNESCO 93 (2007).

Commission as a respondent than a complainant. Though the Conciliation and Good Offices Commission may petition the ICJ for an advisory opinion,<sup>171</sup> the non-binding nature of ICJ advisory opinions<sup>172</sup> would likely not deter Singapore from ratifying the Education Convention.

### C. Singapore Will Comply with the Education Convention Due to Reputational Costs of Noncompliance

In addition to factors that increase Singapore's likelihood of ratifying the Education Convention, there are additional influences that increase the likelihood of Singapore complying with the Education Convention post-ratification. This Section will demonstrate why the reputational costs of failing to comply with the Education Convention will incentivize Singapore to adhere to the Education Convention's terms.

Singapore would be likely to comply with the terms of the Education Convention due to the reputational costs associated with noncompliance of international human rights treaties. Even though the Education Convention's reporting requirement is not a strong enforcement mechanism,<sup>173</sup> it is likely that "reasons of reputation, as well as fear of retaliation and concern about the effects of precedents" would incentivize Singapore to comply with those reporting requirements.<sup>174</sup> Although there has not yet been an Education Convention dispute in front of the ICJ,<sup>175</sup> and any ICJ case would likely take the form of a non-binding advisory opinion on behalf of the Conciliation and Good Offices Commission,<sup>176</sup> Singapore [\*528] would be likely to comply with any ICJ case that arises due to reputational costs of noncompliance.<sup>177</sup>

Recent developments in Singapore's treatment of international human rights treaties indicate that the Singaporean government factors reputational costs into its decision-making processes. The recent ratification of CERD in 2017<sup>178</sup> may demonstrate a shift in Singapore's human rights regime in which the state is more responsive to the outlook of its citizens.<sup>179</sup> For example, before Singapore filed its first CERD state report in 2018,<sup>180</sup> the Singaporean government encouraged the public to offer feedback on the report.<sup>181</sup> In

<sup>170</sup> See *Convention on the Rights of the Child*, *supra* note 12; *Convention on the Elimination of All Forms of Discrimination Against Women*, *supra* note 12.

<sup>171</sup> Conciliation Protocol, *supra* note 78.

<sup>172</sup> *How the Court Works*, INT'L CT. JUST., <https://www.icj-cij.org/en/how-the-court-works> [<https://perma.cc/UBS8-LPHF>].

<sup>173</sup> Dutton, *supra* note 69, at 24.

<sup>174</sup> See SIMMONS, *supra* note 138, at 117 (quoting ROBERT O. KEOHANE, *AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY* 106 (1984)).

<sup>175</sup> See *List of All Cases*, *supra* note 165.

<sup>176</sup> Conciliation Protocol, *supra* note 78.

<sup>177</sup> Christina L. Davis & Julia C. Morse, *Protecting Trade by Legalizing Political Disputes: Why Countries Bring Cases to the International Court of Justice*, 62 INT'L STUD. Q. 709, 711 (2018) ("States may comply with court rulings in the absence of coercive measures or the threat of sanctions because the reputational costs of noncompliance are too high."); Heather L. Jones, *Why Comply? An Analysis of Trends in Compliance with Judgments of the International Court of Justice Since Nicaragua*, 12 CHICAGO-KENT J. INT'L & COMP. L. 57, 60 (2012) ("External political influence, such as pressure from the international community, involvement in international organizations, and reputation costs associated with defiant behavior, fosters compliance with ICJ judgments.").

<sup>178</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, *supra* note 154.

<sup>179</sup> SIMMONS, *supra* note 138, at 118 (establishing that "a government may want to cultivate a domestic reputation for responsiveness to constituency interests" in addition to an "international reputation for cooperativeness").

ratifying CERD and requesting citizen feedback on the CERD state report, the state was likely responding to a cultural phenomenon in **Singapore** in which racist viewpoints previously held in private have increasingly become a part of public discourse.<sup>182</sup> Similarly, **Singapore** would likely face potential reputational costs of noncompliance with the **Education** Convention. Despite its claims of improved **educational** attainment for its female population,<sup>183</sup> the state already has a well-documented gender disparity in **educational** attainment.<sup>184</sup> Based on the reputational cost theory of treaty compliance, **Singapore's** pride in its [\*529] **education** system indicates that it would be more likely to adhere to the terms of the **Education** Convention to appease its citizens and maintain its status as a world leader in **education**.<sup>185</sup>

#### IV. Conclusion

Improving **Singapore's** gender-based disparity in academic achievement<sup>186</sup> requires significant state-level action if female students are going to achieve academic results that are on par with their male peers.<sup>187</sup> Though a comprehensive plan may be required, ratifying and complying with the **Education** Convention is a significant first step that the Singaporean government can take to demonstrate to its constituents that it is serious about remedying its gender gap. **Singapore's** ratification of the **Education** Convention is an interesting test case as to whether adherence to *international* human rights treaties drives tangible legislative and policy results at a *national* level. **Singapore's** high level of academic achievement makes it an even more interesting test case. As a general principle, states that have a large gender-based disparity in **educational** outcomes tend to be those states that rank below average in overall academic achievement.<sup>188</sup> **Singapore**, however, has one of the strongest **education** systems in the world *despite* its gender gap.<sup>189</sup> Given its current academic prowess, dualist treatment of international human rights treaties, high level of economic development,<sup>190</sup> and institutional structures currently in place,<sup>191</sup> it is likely that **Singapore** would be able to remedy its gender gap at a faster

<sup>180</sup> See Comm. on the Elimination of Racial Discrimination, Initial Rep. Submitted by Sing. Under Art. 9 of the Convention, Due in 2018, U.N. Doc. CERD/C/SGP/1 (2018).

<sup>181</sup> *Public Consultation on Singapore's Draft State Party Report on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*, MINISTRY CULTURE, CMTY., & YOUTH, REACH (2018), <https://www.reach.gov.sg/participate/public-consultation/ministry-of-culture-community-and-youth/community-relations-and-engagement-division/public-consultation-on-singapores-draft-state-party-report-on-icerd> [<https://perma.cc/2JTW-ZLLP>].

<sup>182</sup> See Selvaraj Velayutham, *Races Without Racism?: Everyday Race Relations in Singapore*, 24 IDENTITIES: GLOBAL STUDIES IN CULTURE AND POWER 455, 455 (2017) (finding that increased use of the Internet and social media "has highlighted that racism is much more deeply rooted").

<sup>183</sup> See Consideration Under Art. 18, *supra* note 129, at 23.

<sup>184</sup> WORLD ECON. F., *supra* note 5, at 309.

<sup>185</sup> See Stavros N. Yiannouka, *The Secret of Singapore's Success in Education*, STRAITS TIMES (Apr. 11, 2015), <https://www.straitstimes.com/opinion/the-secret-of-singapores-success-in-education> [<https://perma.cc/TVN4-F2T2>].

<sup>186</sup> See WORLD ECON. F., *supra* note 5, at 309.

<sup>187</sup> See Schleicher, *supra* note 4, at 2-3 (showing that the "fairness, integrity and inclusiveness" of state-level **educational** policies significantly affect the cognitive skills of students).

<sup>188</sup> Compare WORLD ECON. F., *supra* note 5, at 12 with Schleicher, *supra* note 4, at 6-8.

<sup>189</sup> Schleicher, *supra* note 4, at 6-8.

<sup>190</sup> See UNITED NATIONS DEV. PROGRAMME, *supra* note 151, at 300 (**Singapore** has the third-highest gross national income per capita).

rate than states with a similarly situated gender gap. Combining these structural components with the legally binding nature of the **Education** Convention, Singaporean legislators would be held accountable so that the next group of female primary school [\*530] students will have the same academic opportunities as their male peers.

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<sup>191</sup> *About Us*, MINISTRY **EDUC.**, <https://www.moe.gov.sg/about> [<https://perma.cc/4J27-7JZ6>] ("The Ministry of **Education** (MOE) formulates and implements **education** policies on **education** structure, curriculum, pedagogy, and assessment.").