

## **CURRICULUM VITAE**

# **MIKIKO OTANI**

### **SPECIALITY**

Family Law (Japanese and International), International human rights law, Children's rights, Women's rights, Access to justice

### **EDUCATIONAL BACKGROUND**

LL.B. in International Legal Studies, Faculty of Law, Sophia University, Tokyo, 1987

Diploma (Training in Law Practice), Legal Training and Research Institute of the Japanese Supreme Court, Tokyo, 1990

Master of International Affairs (Concentration: Human Rights and Humanitarian Affairs), School of International and Public Affairs, Columbia University, New York, 1999

LL.M. in International Law, Graduate School of Law and Politics, University of Tokyo, Tokyo, 2003

### **PROFESSIONAL QUALIFICATION AND WORKING EXPERIENCES**

Admitted to Tokyo Bar Association (1990)

### **LEGAL PRACTICES**

**Shin-kojimachi Law Office** (Tokyo, April 1990 - June 1999)

Associate lawyer

Area of practice: family, civil and criminal

**Otani Law Offices** (Tokyo, June 1999 – October 2009)

Partner lawyer

Area of practice: family law with focus on international family cases

**Toranomon Law & Economic Offices** (Tokyo, October 2009 – October 2012)

Partner lawyer

Area of practice: family law with focus on child issues and international family cases

**Tokyo Public Law Office, Mita Branch** (Tokyo, October 2012 – March 2015)

\*This law office is financially supported by the Tokyo Bar Association as the law office specialized to provide legal services to foreigners in Japan

Co-representative lawyer

Area of practice: family law with focus on child issues and international family cases

**Toranomon Law & Economic Offices** (Tokyo, April 2015 – present)

Partner lawyer

Area of practice: family law with focus on child issues and international family cases

## **OTHER WORKING EXPERIENCES**

Intern, Office of the United Nations High Commissioner for Human Rights/New York Office

(New York, May 1998 - August 1998)

Director, Office of International Affairs, Japan Federation of Bar Associations (January 2006 – December 2007)

Domestic relations conciliator, Tokyo Family Court (October 2003 – present)

Lecturer (International Human Rights Law), Temple University Law School, Program in Japan, (Tokyo, January 2002 – January 2003), Soka University Law School (Tokyo, April 2004 – present), and Omiya Law School (Saitama, April 2004 – March 2014)

Visiting Professor (The Law Concerning Women and Children in Japan and East Asia), University of Hawaii, School of Law (Honolulu, November 2011)

## **PROFESSIONAL SOCIETIES AND NGO ACTIVITIES**

### **Japan Federation of Bar Associations**

Chair, Committee on International Human Rights

Vice-chair, Center for Promotion of International legal Services

Member, Committee on Children's Rights

Member, Committee on Family Law Legislation

Member, Working Group on Hague Convention on International Child Abduction

Member, Center on Gender Equal Participation

### **Tokyo Bar Association**

Member, Family Law Section

### **Japan Women's Bar Association**

Former vice-president

### **Lawyers Network for Foreigners**

Co-representative

### **Lawyers for Trafficked Victims**

Representative

**Japan NGO Network for CEDAW**

Co-representative

**International Human Rights Law Association**

Executive council member

**Asian Society of International Law**

Executive council member of Japan chapter

**Japan Society for Socio-Legal Studies on Family Issues**

Executive council member

**Japan Association of Gender and Law**

Member

**Japanese Society of International Law**

Member

**Japanese Association of World Law**

Member

**LAWASIA (The Law Association for Asia and Pacific)**

Country representative of Japan for the Family Law and Family Rights Section

**Asia Pacific Forum on Women, Law and Development**

Member of the Grounding the Global – International Mechanisms Programme and a former member of the Regional Council and the Programme and Management Committee

**International Bar Association**

Former co-chair of the Women Lawyers Interest Group

**International Academy of Family Lawyers**

Fellow

**International Society of Family Law**

Member

**The World Society of Victimology**

Member

**Frequent lecture and speech** in the professional/NGO training, conferences and public form on the children's rights, women's rights, international human rights law, family law (Japan and international) in Japan and other countries

**Served as a member of the government bodies as an expert:** former member of the Expert Monitoring and Study Committee set up by the Council for Gender Equality of the Cabinet Office: former member of the Committees of Legislative Councils of the Ministry of Justice for the Hague Convention on International Recovery of Maintenance, the Hague Convention on International Child Abduction and Legislation of International Jurisdiction of Personal Relation and Family Cases

## SELECTED PUBLICATIONS

“National Human Rights Commissions in the Asia-Pacific Region and the Ratification of Human Rights Treaties”, *So-Dai Heiwa Kenkyu*, Vol. 20/21 (1998/1999)

“Human Rights and Humanitarian Affairs – International Protection of Human Rights and the Agenda for Japan”, Kosuke Ninomiya and Arseny Beshar (ed.), *Thinking World and Japan at Columbia University Graduate School* (2001)

“Need of Anti-Discrimination Act in Japan: Why and What Kind of? – From Women’s Viewpoint”, *Gendai Sekai to Jinken Series*, Vol.16 (2001)

“Addressing Trafficking in Persons as Transnational Organized Crime”, Hyu-rights Osaka (ed.), *Asia-Pacific Human Rights Review 2006* (2006)

“Protection of Children from Violence (Corporal Punishment)”, Kentaro Serita et al. (ed.), *International Human Rights Law Making and Development, Lecture on International Human Rights Law, vol.2* (2006)

“Revisiting the Role of the International Human Rights Law: Review of and Challenges to the Human Rights Education in Japan”, Hyu-rights Osaka (ed.), *Asia-Pacific Human Rights Review 2007* (2007)

*Handbook on Practice of International Human Rights Law* (co-editor) (2007)

“Access to Justice”, Matsui Ryosuke and Satoshi Kawashima (ed.), *Gaisetsu Convention on the Rights of Persons with Disabilities* (2010)

“Committee on the Rights of the Child”, Kentaro Serita et al. (ed.), *International Implementation of International Human Rights Law, Lecture on International Human Rights Law, vol.4* (2011)

“Practical Issues on Child Custody involved in Separation/Divorce”, *Jurist*, No. 1430 (2011)

“The Hague Convention on Child Abduction”, *Horitsu Jiho*, No. 1040 (2011)

“International Issues on Child Custody: Internationalization of Families and Need of International Response”, *International Affairs*, No. 607 (2011)

*Practice of International Divorce* (co-author) (2012)

*Family Law: Jurisdictional Comparisons*, James Stewart (ed.) (European Lawyer Reference) (author for Chapter on Japan) (2013)

*Q&A International Family Case Studies: Practice of Divorce, Child and Hague Cases* (co-author) (2013)

*Latest Practice of International Family Cases* (co-author) (2015)

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**Hague convention on child abduction: experience of Japan as a new Contracting State**

**Mikiko Otani**  
**13 September 2016**  
**Delhi**

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**Outline**

1. Preparatory process
2. Implementing Legislation
3. Central Authority
4. Jurisdiction of Courts
5. Legal Representation
6. Voice of Child, Child Participation
7. Mediation
8. Appeal, Enforcement
9. Some observations

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**1. Status of preparatory process for implementation**

- Cabinet announced the decision to start the preparation for ratification (May 2011)
- Consultation for drafting implementing legislation started under Ministry of Justice and Ministry of Foreign Affairs (July 2011)
- Draft implementing legislation introduced into the Diet (March 2012)
- Implementing legislation adopted by the Diet (June 2013)
- Supreme Court adopted the rule of procedures (October 2013)
- Ministry of Foreign Affairs (Central Authority) adopted Ordinance (January 2014)
- Japan Signed Convention (January 2014)
- Entry into force on 1 April 2014 --- 91st Contracting State
- Accepted all the acceding States Parties

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## 2. Implementing Legislation

- Title: Act for Implementation of the Convention on the Civil Aspects of International Child Abduction ("Act") (153 articles)
- Two major parts
  - (1) Role of Central Authority
  - (2) Court procedures for return cases
    - Application
    - Grounds for return, exceptions
    - Procedures
    - Decision
    - Appeal
    - Enforcement
- Access cases – existing domestic law and procedures
- Legal aid

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## 3. Central Authority

### Ministry of Foreign Affairs

located in Tokyo

staffed with

- foreign service officers
- lawyers,
- seconded judge, family court probation officer
- other experts (DV specialist, psychologist, social worker)

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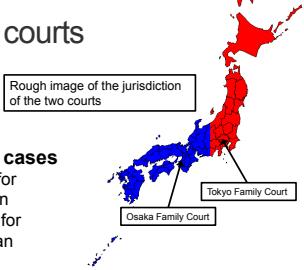
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## 4. Jurisdiction of courts

- **Type of courts**  
Family Court
- **Concentration of jurisdiction for return cases**  
Tokyo Family Court for Eastern part of Japan  
Osaka Family Court for Western part of Japan
- **Access cases**  
All 50 family courts and their branches (total of 203) will hear access cases.



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### 5. Legal representation

- **Referral**
  - Assistance provided by CA
  - Referral list of lawyers created by bar associations
- **Legal aid**
  - Reservation to Art. 26 of Convention
  - Expansion of legal aid to applicants in Contracting States
  - Japanese legal aid: loan provided on means + merit tests
  - Translation and interpretation fee covered
- **Challenges**
  - Scarcity of "international family lawyers"
  - Language, relationship with clients, experience, culture
- **Training**
  - Provided by Japan Federation of Bar Associations (JFBA)
  - Manual for handling Hague cases produced by JFBA

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### 6. Voice of Child, Child Participation

- **General provision**
  - Family court judge shall take into account the intention of the child based on the child's age and degree of maturity (Art. 88)
- **Inquiry of child views**
  - To be conducted by family court probation officers
  - Judicial interview is not generally practiced in the Japanese family court
- **Child participation**
  - Allowed through child's representation by the court permission (Art. 48)
  - Child's representation is limited to lawyers
  - Child can appeal against return orders
  - Cost issue, actual application and practice???

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### 7. Mediation

- **Mediation for domestic family cases**
  - Mediation - part of Japanese family justice system
  - Compulsory mediation system for divorce and other family cases
  - Traditional preference of amicable settlement
  - Japanese mediation - court provided conciliation
- **Mediation for Hague cases**
  - Family court conciliation with consent of parties
    - conciliation panel composed of two conciliators and one judge
    - Japanese nationality requirement (not law, put Supreme Court policy)
    - confidentiality (privilege) issue
  - Out-of-court mediation provided with financial support from CA
    - more flexible than court conciliation
- **Challenges**
  - Expertise, skill, language, cost, use of video/telephone, enforceability

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### 8. Appeal, Enforcement

- **Appeal**  
Appeal to the High Court (second instance court) has automatic effect of staying the enforcement of return orders but not to the Supreme Court (Art. 109)
- **Indirect compulsory execution first**  
Petitioner has to try indirect compulsory execution (monetary sanction) (Art. 136)
- **Execution of return order**
  - To be conducted by combination of court enforcement officer and the person designated by the court (return executor - most likely LBPs) (Art. 138)
  - Certain conditions set out by Act on how to implement execution of return order

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### 9. Some observations

- **International Hague Network Judges**
- **Network at multiple level**
- **Building expertise among lawyers and mediators**
- **Sharing knowledge, experience and information**
- **Multi-stakeholders consultation**
- **Training for all players**
- **Public information in the home country and foreign countries**

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