

Children’s Rights in the Asia-Pacific Region: Critical Reflections on Participation, Education, Girls’ Rights and Child Marriage

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Abstract

The realisation of children’s rights is a pressing global concern, with millions of children globally experiencing abuse, neglect, exploitation, and discrimination. The United Nations Committee on the Rights of the Child urges states to respect, promote and fulfil children’s rights in accordance with the Convention on the Rights of the Child. This paper details insights shared by leading children’s rights advocates at LAWASIA’s webinar, ‘Children and Young People’s Human Rights in Today’s World.’ In this webinar Dr Holly Doel-Mackaway (Children’s Rights Academic and Expert Counsellor, Human Rights Committee, LAWASIA) spoke with three leading children’s rights experts Mikiko Otani (member and former Chair of the Committee on the Rights of the Child), Sharmila Sekaran (Co-Founder of Voice of the Children, Malaysia) and Rukmini Banerji (Chief Executive Officer of Pratham Education Foundation, India) about the status of children’s and young people’s human rights across the world today. Speakers identified key children’s rights challenges facing the Asia-Pacific region including grave violations of girls’ rights, the impacts of growing inequality and poverty on children, children’s participation, child marriage and other forms of abuse and exploitation, education equity and climate justice.

Keywords: children’s rights, girls’, participation, child marriage, educat

Introduction

It is a bleak time for children's rights globally (Lundy, 2019, p. 599). UNICEF describes the impact of the COVID-19 pandemic as the 'biggest global crisis for children' that has rolled back 'virtually every measure of progress for children' plunging 100 million more children into poverty (*UNICEF 2021*). Children across the world are experiencing egregious human rights breaches and domestic implementation of the *Convention on the Rights of the Child* (CRC) (United Nations, 1989) is challenging (Kilkelly, 2019, p. 324; Byrne & Lundy, 2015). Some of the most pressing children's rights concerns are the multi-dimensional impacts of climate change, of poverty, discrimination, the millions of children who have no access to education or health care, persistently high rates of violence and child sexual abuse, child 'marriage,' hazardous child labour, the impact of war and conflict, political persecution and the millions of internally displaced people and people seeking asylum, so many of whom are children and young people. This paper offers reflections from several children's rights experts about the state of children's rights in the Asia-Pacific region today.

A range of children's rights concerns, and ideas for how to overcome them, were discussed at The Law Association for Asia and the Pacific (LAWASIA)¹ webinar *Children and Young People's Human Rights in Today's World* (LAWASIA, 2022). The webinar sought to connect with a diverse body of lawyers and peak legal organisations to support and promote greater adherence to international human rights law across the Asia-Pacific region. It also sought to support legal professionals in the region to better understand children's rights and what role lawyers can play to contribute to greater respect for, and implementation of, children's rights. Over 130 people from 26 different countries across the Asia-Pacific region and beyond attended the event.

Discussion focused on significant children's rights challenges across the region with each speaker presenting their reflections on children's rights in the context of their work. Dr Otani's comments centred around the centrality of children's rights globally, girls' rights, children's participation, children's access to justice, the connection between implementing children's rights and achieving the Sustainable Development Goals. Ms Sekaran focused on the problem of, and complexities associated with, child marriage in Malaysia as well as the impact of COVID-19 control orders imposed on young people in Malaysia. Dr Banerji highlighted the impact of school closures on children's right to education in India during the COVID-19 pandemic and presented her Foundation's

innovative model for education that has enhanced and increased many thousands of children's right to education. These insights are examined below with each speaker drawing on their comments during the webinar and providing further reflections.

Dr. Mikiko Otani: Protecting Human Rights and Achieving Gender Equality Begins with Children

Dr Mikiko Otani is a current member (2017-2025) and former Chair (2021-2023) of the Committee on the Rights of the Child; Rotating Honorary Chair in Enforcement of Children's Rights (2023/2024), Leiden University.

I am witnessing many children's rights challenges occurring throughout the world today. There is a correlation between women's rights and children's rights and 'to achieve gender equality we need to focus on girls' (LAWASIA, 2022). One of the most significant child rights challenges is 'the backlash or pushback' against child rights 'at the global level, but also at the regional and national levels' (LAWASIA, 2022). This is connected to 'the backlash against the women's rights movement' and to gender mainstreaming such that despite the rights provided for in the CRC, 'we still haven't reached the level of child rights mainstreaming' and 'we are still fighting against the conception that children don't really have rights' (LAWASIA, 2022). Global and national perceptions about children that attribute rights to adults and parents, and position children as 'vulnerable and immature,' are a fundamental barrier to the implementation of the CRC (LAWASIA, 2022). I am concerned that these problematic attitudes toward children and young people remain despite the CRC being adopted more than 30 years ago and notwithstanding the *Universal Declaration of Human Rights* (UN General Assembly, 1948, sec. Preamble) affording every human being with equal rights more than 70 years ago. This is reflected across society, including within the United Nations system, where children, particularly in younger age, as well as children between the ages of 15 and 17 years old, 'do not have enough space at the global level in the United Nations setting, nor do they at the national level' despite increasing focus on youth (LAWASIA, 2022).

As articulated in my 2020 re-election speech for the Committee on the Rights of the Child, I am committed to focusing on three critical children's rights issues: 'girls, child participation, and access to justice for children' (Otani, 2020). I unequivocally situate the realisation of human rights and the necessary conditions for a strong and equitable societies as starting with respect for children's rights. I emphasised this in my re-election speech when I said: 'any efforts to protect human rights and achieve gender equality begin with children

... protecting children's rights can make the entire society more just, peaceful, inclusive and sustainable' (Otani, 2020). The correlation between human rights, peace, international development and gender equity cannot be overstated: 'If we really want to create a peaceful society, human rights have such an important role to play in building and sustaining peace' (LAWASIA, 2022).

I often reflect on my learning about human rights as a law student in Japan, and later my work as a lawyer, and my enduring interest in human rights education that catalysed in 1993 when the World Conference on Human Rights was held and the Vienna Declaration and Programme of Action was adopted (Vienna, 1993). The Vienna Declaration and Programme of Action highlighted the importance of human rights education leading to the United Nations Decade for Human Rights Education from 1995-1994 (Office of the High Commissioner for Human Rights). However, I remain concerned about narrow understandings of human rights where, for instance, 'a lawyer's work is to provide remedies when a violation happens' (LAWASIA, 2022). I propose a more comprehensive conceptualisation of human rights: 'we need to practise human rights everywhere, in our everyday life' and this will 'contribute more to the prevention of human rights violations rather than working toward a remedy after rights have been breached' (LAWASIA, 2022).

As a result of my extensive experience engaging with human rights bodies, I advocate for a focus on the 'rights of women, children and migrants' and, in doing so, I encourage states to 'adopt a child rights perspective to strengthen the implementation of the 2030 Agenda for Sustainable Development' (LAWASIA, 2022). The Sustainable Development Goals are 'about sustainable development, but they are also about a sustainable society, and sustainable peace' and to achieve this, we should start with children because 'we cannot neglect the critical importance of this group of people' and, 'when we work together with children, this is a foundation for an inclusive, sustainable and just society' (LAWASIA, 2022).

The Committee on the Rights of the Child is listening very seriously to the voices of children and what children are saying about climate justice, and we suggest the international community do likewise. In my Statement at the General Assembly in October 2021, I conveyed my grave concerns about the impact of the COVID-19 pandemic on children, the alarming increase in child poverty, and the adverse effects of climate change on children's life trajectories (Otani, 2021). In the LAWASIA webinar, I reiterated this when I said: 'Climate change is affecting all children globally, however, those children in countries who have contributed least to global warming are actually affected most seriously ... and children

are the most seriously affected group in the population' (LAWASIA, 2022). These concerns were echoed and responded to by the Committee on the Rights of the Child in the draft General Comment No. 26 on Children's Rights, the Environment and Climate Change (Committee on the Rights of the Child, 2023).

Inequality is perhaps the most pressing children's rights challenge in the world today – inequality in relation to access to resources and education, the digital divide and in relation to the effects of climate change. The international community has not come together in solidarity to address inequality and discrimination in relation to children and 'wealthy countries haven't met their responsibilities to realise children's rights in every place' (LAWASIA, 2022). I concluded my address for the LAWSASIA webinar with the following words and I would like to reiterate them here: 'we need to talk about international cooperation and the responsibilities of all states to work jointly for the realisation of universal human rights, including of course, children's rights' (LAWASIA, 2022).

Sharmila Sekaran: Child 'Marriage' and COVID control orders in Malaysia

Ms Sharmila Sekaran is co-founder of Voice of the Children, Malaysia.

With three other child rights advocates, we founded an organisation in Malaysia called Voice of the Children, the mandate of which is to advocate for law and policy reform in relation to children's rights and to raise awareness about issues that affect the rights, wellbeing, development, and protection of all children in Malaysia so that they have freedom from abuse and exploitation. Advancing children's participation in relation to issues which affect them is a core part of what Voice of the Children does.

At the LAWASIA webinar, I spoke about the hidden problem of child marriage in Malaysia and the likelihood that there are many child marriages that have taken place informally. In 2019, Voice of the Children made a documentary about child marriage in Malaysia called 'Stolen Futures' where we spoke with children who had experienced this form of exploitation and abuse; we documented the views of two children.² There has been a 'growth in child marriage since the pandemic' and there are different laws governing child marriage for different communities in Malaysia (LAWASIA, 2022). Non-Muslim marriages are governed by the *Law Reform, Marriage and Divorce Act* (1976) and Muslim marriages are governed by Islamic family law enactments which vary in each state in Malaysia, and each state's legislative assembly enacts its own laws in line with a generalised template

(LAWASIA, 2022). Further, First Peoples of Malaysia's marriages are governed by their own cultural norms and traditions (LAWASIA, 2022). Addressing child marriage in Malaysia needs to be assessed from these different perspectives and requires different strategies. In relation to Muslim marriages, in general, the law requires males to be above the age of 18 and females to be above the age of 16 years old. However, applications can be made to the Sharia court to receive permission to be married below these ages, and there is no stipulated minimum age for such applications. The effect of this is that 'girls who have reached the age of puberty can apply to the Sharia court and the judge can give permission for a girl who has reached the age of puberty, at the age of 9, 10 or 12 years old, to be married because the law does not stipulate a minimum age' (LAWASIA, 2022). I note with concern that judges seldom act in the best interests of the child in these cases and 'rarely is there consideration and deliberation before giving permission' for the marriage to occur (LAWASIA, 2022). In our research with children and young people, Voice of the Children identified the following five interrelated drivers of child marriage:

1. The fact that laws do not prohibit child marriage;
2. Poverty and low socio-economic status;
3. Lack of awareness and education in relation to sexual reproductive health;
4. Problems with, or undeveloped, parenting skills;
5. Lack of access to quality education, teacher absenteeism, and poor school attendance;
6. Stigma related to child and teenage pregnancy.

There are connections between these drivers of child marriage; for instance, if a child becomes pregnant, 'marriage is seen as being the only response or the only viable pathway' (LAWASIA, 2022). Further, a key driver of child marriage is a lack of access to quality education, particularly in lower socio-economic areas, which compromises children's engagement in schooling and ensuing opportunities. This means that if students are not engaged in schooling, they are more likely to not attend school, and could be, therefore, more vulnerable to child marriage. Addressing high rates of teacher absenteeism and poor teaching quality, that contributes to children becoming disengaged in school, is vital. This is exacerbated if parents do not agree that there is a need for a child to go to school, which leaves children, particularly girls, more vulnerable to child marriage.

In the webinar, I also spoke about increased children's rights violations in Malaysia during the COVID-19 pandemic due to expanded control orders on children's and young people's movement in society. Many more children have come into conflict with the law

because of these control orders, and they disproportionately impact children from lower socio-economic circumstances who, in most instances, are 'completely unrepresented' in court and, due to inadequate welfare support during the pandemic, children were frequently 'shackled and handcuffed' when brought into court and 'not taken into a separate courtroom for children which our system does require' (LAWASIA, 2022).

Voice of the Children has identified that protecting children from coming into conflict with the law is an urgent area of law reform and is symptomatic of the need for structural reform within Malaysia's juvenile justice system. This includes the need to improve the skills of all stakeholders within the juvenile justice system including child welfare officers, police, prosecutors, defense counsel, magistrates and judges about children's rights, and the centrality of the CRC when managing and adjudicating matters concerning children.

Dr. Rukmini Banerji: Lessons from COVID Related School Closures in India

Dr Rukmini Banerji is the Chief Executive Officer, Pratham Education Foundation, India

In the LAWASIA webinar, I shared the work the Pratham Education Foundation is doing to advance children's right to education in India. Over the past several decades, the Indian Government has been concentrating on providing children with their right to education, and the work of the Pratham Education Foundation³ supports this aim. I spoke about a radically different model of education we pioneered in India for which, among other things, I won the 2021 Yidan Prize for Education Development.⁴ Pratham means 'first' in Sanskrit and our organisation, operating since 1995, centres on advancing children's rights to education in India and is the first organisation that has been able to achieve lasting, wide-scale success in changing India's educational landscape. The Pratham Education Foundation pioneered a profoundly different approach to working toward the fulfilment of children's education via the delivery of the Annual Status of Education Report (ASER) and a teaching approach called Teaching-at-the-Right Level (TaRL). These initiatives work in concert with one another: the ASER identifies learning problems and the TaRL approach provides solutions to these problems.

It is easy to *see* children who are not in school. However, children who are in school, but are not learning, are *invisible*. One of the key challenges that the Pratham Education Foundation seeks to address is how does schooling and learning move together? Guaranteeing universal schooling, as well as guaranteeing that every child learns, are

fundamental to fulfilling children's right to education 'because in the end, the reason that you have an education, that you have years of schooling, is because all of that has to translate into some kind of value added that increases a child's capabilities' (LAWASIA, 2022).

Children being left behind in school is a global problem that the Pratham Education Foundation seeks to address. The Pratham Education Foundation has facilitated the ASER since 2005. The ASER is a household-based, citizen-led survey of unprecedented scale, assessing 600,000 children's schooling status and basic reading and arithmetic skills in practically all rural districts in India over a 100-day period each year. The survey collects data on the enrolment status of children aged 3-16 years old and basic reading and arithmetic levels of children aged 5-16 years old. The series of reports provides crucial data over time on key indicators of quality education. This is a significant educational achievement and, since we began this program, many other countries have adopted this assessment method, leading to excellent educational outcomes for children across the world.

The vast impact of the COVID-19 pandemic on children's education in recent years, given lockdowns and home-schooling, will have lasting detrimental impacts for children's education in India. The pandemic has led to the most significant and unprecedented disruption to children's education globally and many children have missed out on nearly two years of education – education they may never regain, including many children who will never return to school. Research conducted some years ago after the Pakistan earthquake that examined the effect of the earthquake on children and on livelihoods (as well as other factors), revealed that several years after the earthquake, livelihood and health indicators returned to pre-earthquake levels, but children's learning levels did not (Andrabi et al., 2021). The researchers in that study attributed children's poor educational outcomes post-earthquake to circumstances related to when schools reopened far more than what occurred during school closures. Learning from this research and relating it to the reopening of schools in India after the COVID-19 pandemic, is the most important consideration now and into the future; we must focus on what needs to be done now to address several years of school closures. This is especially important in circumstances where learning levels were low prior to the pandemic because of a range of reasons including malalignment between children's developmental age and the curriculum (which is a common problem in India) resulting in many children falling behind educationally, often permanently. For example, if a child was struggling to meet educational standards in third grade before the pandemic, now, several years later, they are in fifth grade and 'giving them a fifth-grade textbook and curriculum is absolutely the wrong thing to do. We need to start where the children are and build up from there' (LAWASIA,

2022). Instead, 'this may be the time to bring in reform to bring curriculum levels close to the levels of children and help really promote learning for all' including giving more attention to addressing inequality and addressing children's mental health and digital connectivity (LAWASIA, 2022).

Importantly, there have been some unanticipated positive implications resulting from the pandemic as lockdowns changed homes into classrooms and many parents became closely aware of, and often deeply engaged in, their children's education. I have witnessed a key shift in relation to children's education because of the COVID-19 pandemic and this centres on the engagement of parents in their children's education that transformed from *supporting* children's schooling to understanding and taking an interest in their learning. In India, 'parents have always been very supportive of schooling but with schools shut and, in particular, in families where digital connectivity was an issue, parents across all education groups have really engaged, or tried to engage, with what children were *learning*' (LAWASIA, 2022). Bridging the divide between parental understandings of schooling and learning filled a missing link in children's education and has paved the way for ongoing parental engagement in children's education, which is overwhelmingly positive. The pandemic has 'accelerated the acknowledgement that we need to bring these two things together' (LAWASIA, 2022).

Conclusion

Implementing the *Convention on the Rights of the Child* (CRC) across the Asia-Pacific region remains a challenge some 30 years after ratifying states promised to respect, protect, and fulfil the rights it provides. The United Nations Committee on the Rights of the Child, in their respective concluding observations in response to country periodic reports on the CRC, continuously guides states in the actions they need to take to ensure children enjoy their rights; yet progress is concerningly slow. The children's rights advocates who participated in this discussion are each playing key roles in the progressive realisation of children's rights and together they identified three key overarching children's rights concerns affecting the region: inequality, poverty, and discrimination against children. They identified many symptoms and drivers of these concerns that require urgent action including addressing climate change, poverty, child marriage, children's participation, girls' rights, children's access to justice, and children's right to education.

The global community needs to do far more to implement the CRC at the domestic level to address children's rights violations. This paper provides some reflections from children's rights experts about key children's rights challenges across the Asia-Pacific region. We hope these insights will inspire legal professionals and others to work within their respective spheres to undertake children's rights advocacy and promote the advancement of the CRC in board rooms, court rooms and throughout our communities. As Dr Otani, member and former Chair of the Committee on the Rights of the Child, said, 'any efforts to protect human rights and achieve gender equality begin with children' (LAWASIA, 2022).

Biographies

Dr Holly Doel-Mackaway is a legal academic at the Macquarie Law School in Sydney and has worked as a children's rights lawyer across more than 20 countries in the Asia-Pacific for UNICEF, Save the Children and various other international non-government organisations on matters relating to child protection, girls' rights, the commercial sexual exploitation of children, children engaged in armed conflict and child rights-based approaches to research and development. Her research focuses on children and the law and interrogates the legal relationship between children and the State. Her 2022 book *Indigenous Children's Right to Participate in Law and Policy Development* presents a model for reforming and developing Indigenous related legislation and policy in Australia and internationally. The model provides guidance about how to seek, listen to and respond to the voices of Indigenous children and young people in line with the provisions set out in the *Convention on the Rights of the Child*. Prior to becoming a lawyer Dr Doel-Mackaway worked as a social worker with women and children who had experienced domestic violence and sexual abuse.

Dr Mikiko Otani is a member (2017-2025), and former Chair (2021-2023), of the United Nations Committee on the Rights of the Child, the body of 18 independent experts who monitor State implementation of the most widely ratified human rights treaty in history, the CRC. On 31 August 2023 she was appointed as the Rotating Honorary Chair 2023/2024 in Enforcement of Children's Rights at the Department of Child Law, Leiden University. Dr Otani is a practicing lawyer who specialises in family law and has extensive experience of NGO advocacy focusing on the implementation of international human rights law. Her focus areas include women and children, human trafficking, access to justice and remedies for child victims, children and armed conflict and human rights education. Dr Otani is a leading representative in Japan's civil society. She was an Alternate Representative for the Japanese

delegation to the UN General Assembly and an NGO Representative Advisor for the Japanese delegation to the UN Commission on the Status of Women. Dr Otani has been actively involved with NGOs and professional organizations at the regional and the international levels for many years.

Dr Rukmini Banerji is Chief Executive Officer of Pratham Education Foundation, India. She has extensive field experience working directly with rural and urban communities as well as in designing and implementing large scale partnerships with governments for improving learning of elementary school age children. From 2005 to 2014, she led Pratham's research and assessment efforts including the well-known ASER initiative (Annual Status of Education Report). Dr Banerji is the 2021 recipient of the Yidan Prize for education development.

Sharmila Sekaran is the co-founder and founding chairperson of the NGO, Voice of the Children, an advocacy group with a mission to promote law and policy reform to advance children's protection rights in Malaysia. Ms Sekaran advises on several Malaysian Government child protection Special Task Forces. She speaks locally and internationally on many children's rights issues. She is a partner at Jerald Gomez & Associates in Malaysia and studied law in the UK and graduated with an Honours Degree in Law and Economics.

References

- Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna. (1993). *Vienna Declaration and Programme of Action*.
- Andrabi, T., Daniels, B., & Das, J. (2021). Human capital accumulation and disasters: Evidence from the Pakistan earthquake of 2005. *Journal of Human Resources*, 0520-10887R1.
- Byrne, B., & Lundy, L. (2015). Reconciling Children's Policy and Children's Rights: Barriers to Effective Government Delivery. *Children & Society*, 29(4), 266–276. <https://doi.org/10.1111/chso.12045>
- Committee on the Rights of the Child. (2023). *General Comment No. 26 on Children's Rights and the Environment with a Special Focus on Climate Change (22 August 2023, CRC/C/GC/26)*.
- Kilkelly, U. (2019). The UN convention on the rights of the child: Incremental and transformative approaches to legal implementation. *The International Journal of Human Rights*, 23(3), 323–337. <https://doi.org/10.1080/13642987.2018.1558974>
- LAWASIA. (2022, March 31). *Children and Young People's Human Rights in Today's World*. <https://lawasia.asn.au/children-and-young-peoples-human-rights-todays-world>

- Lundy, L. (2019). A Lexicon for Research on International Children's Rights in Troubled Times. *International Journal of Children's Rights*, 27(4), 595–601.
<https://doi.org/10.1163/15718182-02704013>
- Office of the High Commissioner for Human Rights. (n.d.). *Human Rights Education and Training, United Nations Decade for Human Rights Education (1995-2004)*.
<https://www.ohchr.org/en/resources/educators/human-rights-education-training/united-nations-decade-human-rights-education-1995-2004>
- Otani, M. (2021). *Statement by Mikiko Otani Chair of the Committee on the Rights of the Child at the 76th session of the General Assembly*.
<https://www.ohchr.org/en/statements/2021/10/statement-mikiko-otani-chair-committee-rights-child-76th-session-general>
- Otani, M. (2020). *Re-election candidature speech for the Committee on the Rights of the Child*. <https://youtu.be/4ZZsir7dXoY>
- UN General Assembly. (1948). *Universal Declaration of Human Rights, G.A. Res. 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc. A/RES/217A (III) (10 December 1948)*.
- UNICEF, *COVID-19 'Biggest Global Crisis for Children in our 75-year History,' Press Release citing "Preventing a Lost Decade: Urgent Action to Reverse the Devastating Impact of COVID-19 on Children and Young People."* (2021). UNICEF.
<https://www.unicef.org/press-releases/covid-19-biggest-global-crisis-children-our-75-year-history-unicef>
- United Nations. (1989). *Convention on the Rights of the Child, opened for signature 20 November 1989, 44 UNTS 25 (entered into force 2 September 1990)*.

Notes

¹ For over fifty years, LAWASIA has operated as a platform to promote the cross-jurisdictional exchange of legal knowledge; as a voice of the legal profession; and as a conduit for encouraging adherence to mutually held principles of the rule of law, professional integrity and the protection of human rights, <https://lawasia.asn.au/>; LAWASIA Human Rights Committee mandate and members: <https://lawasia.asn.au/our-committees/human-rights>.

² For further information see: <https://www.bfm.my/podcast/evening-edition/evening-edition/stolen-futures-child-marriage-in-malaysia>

³ <https://www.pratham.org/about/>

⁴ <https://yidanprize.org/global-community/laureates/rukmini-banerji/>