

# UNIVERSAL PERIODIC REVIEW

## JAPAN

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Contribution prepared by:

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**ECPAT/STOP Japan**, an affiliate member organization of the ECPAT network (End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes) in Japan. ECPAT STOP Japan was established in 1992.

ECPAT STOP Japan's main activities include lobbying Congress, ministries and government offices. In addition, ECPAT/STOP Japan participates in international forums, investigations on child pornography, the translation and publication of books and documents on CSEC related matters, issues newsletters, and holds forums for students. Website: <http://eapatstop.org>

**ECPAT Japan Kansai** was founded in 1992, and is an affiliate member organization of the ECPAT network in Japan.

ECPAT Japan's main areas of expertise include advocacy, lobbying, education and training, publication and research on the issue of commercial sexual exploitation of children.

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**ECPAT International** (End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes) is the leading global network working to end the commercial sexual exploitation of children (child prostitution, child pornography and child trafficking). It represents 82 member organizations from 75 countries. ECPAT International holds Consultative status with ECOSOC. Website: [www.eapat.net](http://www.eapat.net)

## Executive Summary

This contribution aims to provide a review of the status of implementation of international obligations and commitments regarding the commercial sexual exploitation of children (CSEC) in Japan during the four year period between 2008 and 2011. Notably, the country has not yet ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, nor has it ratified the *UN Convention against Transnational Organized Crimes*, resulting in major gaps in children's legal protection against trafficking. Japan has also failed to ratify the *Council of Europe Convention on Cybercrime* which would significantly strengthen Japanese legislation on child pornography; especially through the criminalization of mere possession of child pornography and virtual child pornography, currently not criminalized in Japan. In terms of domestic legal framework, Japanese legislation also lacks clear and comprehensive definitions of child pornography and trafficking in children. The ratification of relevant international legal standards as well as widespread legal reform is therefore necessary in order to align the domestic legal framework with relevant international legal standards on CSEC.

Concerning policy framework, Japan's National Plan of Action lacks a comprehensive rights-based approach for children covering all areas of the Convention. It is recommended that Japan adopt medium and long term objectives to protect children and provide adequate human and financial resources, and a monitoring mechanism to assess progress made to protect children from CSEC and adjust measures as necessary.

The following findings are drawn from relevant literature from international experts including the Committee on the Rights of the Child and ECPAT International.

### **1. Current normative and institutional framework for the promotion and protection of human rights**

#### **1.1 Legal Framework**

##### **1.1.1 International Legal Standards**

Japan ratified the 1989 *Convention on the Rights of the Child* (CRC) on 22 April 1994, the 2000 *Optional Protocol on the sale of children, child prostitution and child pornography* (2000) (OPSC) on 24 January 2005, and the 1999 *ILO Convention on the Worst Forms of Child Labour* on 18 June 2001.

However, Japan has not yet ratified the 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (Trafficking Protocol). Nor has it ratified the *UN Convention against transnational Organized Crime*.

It is highly recommended that the country ratifies the Trafficking Protocol and the UN Convention against transnational Organized Crime.

##### **1.1.2 Regional Legal Standards**

Japan has signed but not ratified the *Council of Europe Convention on Cybercrime* (2004). The Council of Europe Convention criminalizes mere possession of child pornography, which is a major issue in Japan, where such conducts are not illegal.

It is recommended that Japan ratifies the Council of Europe Convention on Cybercrime.

### 1.1.3 Domestic Legal Framework

Japan does not have a comprehensive legal framework on children's rights.<sup>1</sup> The CRC Concluding Observations to the OPSC (2010) highlighted the discrepancies between domestic law and the provisions in the OPSC, such as the lack of definition of the sale of children.<sup>2</sup> In addition, the law addressing child pornography is not in compliance with relevant international legal standards.

Another concern is that current domestic legislation, under which children who are victims of violations of the OPSC may be treated as criminals rather than victims<sup>3</sup>.

It is necessary that the Japanese authorities undertake a comprehensive legal reform in order to harmonize the current legal framework with provisions of relevant international legal standards.

#### Key recommendations:

- To adopt comprehensive laws on child rights and to take steps to fully harmonize legislation with the principles and provisions of the CRC and its Optional Protocol on the sale of children, child prostitution and child pornography<sup>4</sup>;
- To ensure the harmonization of national legislation with the OPSC;
- To provide a clear definition of the sale of children, drawing a distinction between trafficking in persons and the sale of children;
- To amend the legislation to ensure child victims of CSEC and other violations under OPSC are treated as victims, not offenders.<sup>5</sup>

#### 1.1.3.1 Laws addressing child prostitution

Japanese legislation concerning child prostitution is consistent with relevant international legal standards. The *Act on Punishing Activities relating to Child Prostitution and Child Pornography, and the protection of Children in Japan* (1999 – revised in 2004) defines a child as a person under the age of 18. Article 2 of the Act defines child prostitution as “the act of performing sexual intercourse or of making the child touch one’s own genital organs in return for giving or promising to give remuneration to the child, the person who acts as an intermediary in sexual intercourse or similar acts with the child or a person responsible for protecting the child.”<sup>6</sup> This definition is in compliance with Article 2 of the OPSC.

Under Article 4 of the Act, convicted offenders can face the following penalties: (i) up to five years in prison or a fine up to three million yen for those who engage in child prostitution, (ii) up to five years in prison or a fine up to five million yen for those who facilitate or solicit the prostitution of a child, (iii) up to seven years and a fine of 10 million yen for engaging in

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<sup>1</sup> Committee on the Rights of the Child (CRC), “Concluding Observations to the Convention on the Rights of the Child: Japan, Fifty – fourth session”, 25 May – 11 June 2010.

<sup>2</sup> Committee on the Rights of the Child (CRC), “Concluding Observations to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography: Japan, Fifty-fourth session”, 25 May – 11 June 2010.

<sup>3</sup> Ibid.

<sup>4</sup> Committee on the Rights of the Child (CRC), “Concluding Observations to the Convention on the Rights of the Child: Japan, Fifty – fourth session”, 25 May – 11 June 2010.

<sup>5</sup> Ibid.

<sup>6</sup> ECPAT International, “Global Monitoring Report on Status of Action against Commercial sexual exploitation of children – Japan”, 2011. Accessible at: [http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A2011\\_EAP\\_JAPAN\\_FINAL.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A2011_EAP_JAPAN_FINAL.pdf)

the business of facilitating or soliciting child prostitution.<sup>7</sup> However, offences relating to child pornography set out in the Optional Protocol are not fully covered under the Japanese Penal Law. Specifically, it does not criminalize offering, obtaining, procuring or providing a child for child prostitution.<sup>8</sup>

The *Law on Control and Improvement of Amusement and Entertainment Businesses* prohibits entertainment and amusement businesses from employing persons under 18 to entertain or dance with guests, or to work as waiters or waitresses from 10pm until sunrise. Japan enacted the Online Dating Site Regulation Law in June 2003 to combat child sexual exploitation through internet dating sites. However, the law only aims to eliminate the use of online dating websites to facilitate child prostitution, excluding other types of websites.<sup>9</sup>

#### **Key recommendations:**

- To create provisions that specifically deal with dating service cafes, to prohibit minors from entering the cafes and to limit the areas in which such facilities can operate;
- To criminalize offering, obtaining, procuring or providing a child for child prostitution;
- To revise the Online Dating Site Regulation Law to prohibit the solicitation of child victims of prostitution through Internet websites.

#### **1.1.3.2 Laws addressing child pornography**

Japanese law on child pornography is not in line with relevant international legal standards. Article 2.3 of the *Law on Punishing Acts related to Child Prostitution and Child Pornography and for Protecting Children* does not include virtual child pornography (such as cartoons and computer generated images) within its definition of child pornography as it only criminalizes representations of real children engaged in sexual intercourse or acts similar to sexual intercourse.<sup>10</sup> Such a definition does not comply with the definition of child pornography provided in Article 2(c) of the OPSC and gives rise to major concerns as Japan is producing a large number of materials (*hentai* publications, anime, movies, videogames, Internet websites, etc.) which depict children in a way that should be considered child pornography under the OPSC. In addition, this definition does not include audio and written materials. Japanese legislation does not criminalize mere possession of child pornography (possession without intention to distribute). According to Article 7 of the *Law on Punishing Acts related to Child Prostitution and Child Pornography, and for Protecting Children*, possession of child pornography is only criminalized if the offender has the intention to offer or distribute the materials. The fact that mere possession of child pornography is not illegal, may contribute to the demand for child sexual exploitation and, promote the idea that sexual activities with

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<sup>7</sup> ECPAT International, "Global Monitoring Report on Status of Action against Commercial sexual exploitation of children – Japan", 2011. Accessible at: [http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A2011\\_EAP\\_JAPAN\\_FINAL.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A2011_EAP_JAPAN_FINAL.pdf)

<sup>8</sup> Committee on the Rights of the Child (CRC), "Concluding Observations to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography: Japan, Fifty-fourth session", 25 May – 11 June 2010.

<sup>9</sup> Ibid.

<sup>10</sup> ECPAT International, "Global Monitoring Report on Status of Action against Commercial sexual exploitation of children – Japan", 2011. Accessible at: [http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A2011\\_EAP\\_JAPAN\\_FINAL.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A2011_EAP_JAPAN_FINAL.pdf)

children is socially acceptable. In addition, it hampers criminal investigations as local law enforcement agencies cannot confiscate or search suspects' computers.<sup>11</sup>

The *Law on Punishing Acts related to Child Prostitution and Child Pornography, and for Protecting Children* also fails to criminalize knowingly accessing, viewing child pornography through the use of information and communication technologies.

Moreover, Japanese legislation does not contain a provision that specifically criminalizes the solicitation of children for sexual purposes (grooming) by means of information and communication technology.

Japanese *Law for Punishing Acts Related to Child Prostitution and Child Pornography* contains a provision (Art. 2 (3) (iii)) that criminalizes a child posing wholly or partially naked, which arouses or stimulates the viewer's sexual desire. Such a definition covers sexualized materials involving children (child erotica). However, this legal provision lacks enforcement, as sexualized materials featuring children - are openly available in Japanese cities.

#### **Key recommendations:**

- To criminalize mere possession of child pornography, as well as producing, distributing, disseminating, importing, exporting, offering and selling of such material;
- To criminalize virtual child pornography (cartoons, anime, video games, drawings);
- To take steps to criminalize the solicitation of children for sexual purposes (grooming) through the use of information and communication technology and the intentional viewing and accessing of child pornography;
- To impose an obligation on internet service providers to report child pornography.
- To enforce Art. 2 (3) (iii) of the *Japan Law for Punishing Acts Related to Child Prostitution and Child Pornography* which prohibits the production of sexualized materials involving children (child erotica).

#### **1.1.3.3 Laws addressing Child Trafficking**

Japan has not yet ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* and Japan's current anti-trafficking legislation does not comply with relevant international legal standards.

The *Immigration Control and Refugee Recognition Act* (Article 2) defines trafficking as kidnapping, buying or selling a person to make a profit, commit an indecent act, or cause injury to the trafficked person's life or physical being. The Penal Code prohibits delivering, receiving, transporting, or harbouring a person who has been kidnapped, bought, or sold for the purpose of making a profit, committing an indecent act or causing injury to the trafficked person's life or physical being. This definition is not in line with Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* as it fails to criminalize trafficking for the purpose of exploitation, including sexual exploitation.

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<sup>11</sup> ECPAT International, "Global Monitoring Report on Status of Action against Commercial sexual exploitation of children – Japan", 2011. Accessible at:  
[http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A2011\\_EAP\\_JAPAN\\_FINAL.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A2011_EAP_JAPAN_FINAL.pdf)

**Key recommendation:**

- To review legislation regulating trafficking in children so that all acts constituting trafficking under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, are covered .

**2. Promotion and protection of Human Rights on the ground: implementation of international human rights standards**

Japan lacks a comprehensive rights-based national plan of action for children covering all areas of the Convention and its Optional Protocols. It is recommended that Japan adopt medium and long term objectives to protect children's rights, provide adequate human and financial resources, and a monitoring mechanism to assess the progress made towards the realization of children's rights and adjust measures as necessary.

**2.1 Key areas of concern with regard to the implementation of the children's right to protection against commercial sexual exploitation on the ground****2.1.1 Inadequate support for child victims of CSEC**

There remains inadequate cooperation in providing assistance to trafficking victims. There is no clear procedure for assisting victims in filing criminal or civil complaints against their alleged traffickers.<sup>12</sup> Moreover, the lack of cooperation among various governmental agencies handling trafficking cases continues to be a problem, specifically in the provision of clear statistics on investigation, prosecution and sentencing.<sup>13</sup>

The existing facilities accommodating both children and adults are not specialized enough to ensure effective support to child victims of sex trafficking.<sup>14</sup>

Child-friendly judicial procedures are not yet mandatory in cases where child victims are asked to testify, although though in practice they are respected. In particular, if the child does not feel comfortable with testifying in court, examination may be conducted privately, outside the court.<sup>15</sup>

Moreover, there is a lack of provisions concerning counseling services, physical and psychological recovery and social reintegration measures for victims of offences under the OPSC, leading to insufficient support for child victims in the period of recovery and reintegration.<sup>16</sup>

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<sup>12</sup> ECPAT International, "Global Monitoring Report on Status of Action against Commercial sexual exploitation of children – Japan", 2011. Accessible at:

[http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A2011\\_EAP\\_JAPAN\\_FINAL.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A2011_EAP_JAPAN_FINAL.pdf)

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Committee on the Rights of the Child (CRC), "Concluding Observations to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography: Japan, Fifty-fourth session", 25 May – 11 June 2010.

**Key recommendations:**

- To establish and enforce relevant child-friendly judicial procedures should be reviewed and modified accordingly to ensure that children are not subjected to additional trauma;
- To expand specialized support services, including rehabilitation, reintegration and recovery supports for children victimized by commercial sexual exploitation must be established;
- To strengthen cooperation among stakeholders to provide sufficient services for child victims of CSEC.

**2.1.2 Lack of independent monitoring**

According to the Committee on the Rights of the Child, there is no national mechanism in place to monitor the implementation of the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child. This major gap should be urgently addressed by the establishment of an independent institution having a clear mandate to monitor progress made in relation to the realization of children's rights in Japan.

**Recommendations:**

- To establish a National Human Rights Commission, with a mandate compliant with the Paris Principles, which would include monitoring the implementation of the Convention on the Rights of the Child and the Optional Protocols<sup>17</sup>;
- To provide information on the mandate, functions and resources allocated to the National Human Rights Commission and to the ombudspersons.<sup>18</sup>

**2.1.3 Inadequate training for professionals working with or for child victims of trafficking and among general public as well as a lack of plans to disseminate the principles and provisions of the Convention and Optional Protocols**

There is no national plan or initiative to raise public awareness on the Convention on the Rights of the Child and Optional Protocols.

Trainings for police, judges and prosecutors are insufficient and due to the lack of training, child victims of CSEC are treated as criminals and deprived of their right to care and protection.<sup>19</sup>

**Recommendations:**

- To develop initiatives and campaigns aimed at raising public awareness on the issue of commercial sexual exploitation of children and the legal standards developed at all levels to protect children;
- To develop systematic and ongoing training programmes on child rights in general and specifically on the commercial sexual exploitation of children for all persons

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<sup>17</sup> Committee on the Rights of the Child (CRC), "Concluding Observations to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography: Japan, Fifty-fourth session", 25 May – 11 June 2010.

<sup>18</sup> Ibid.

<sup>19</sup> ECPAT International, "Global Monitoring Report on Status of Action against Commercial sexual exploitation of children – Japan", 2011. Accessible at:

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working for and with children (including teachers, judges, lawyers, law enforcement officials, social workers, media professionals);

- To develop training on child-sensitive approaches for the staff of the Office for Juvenile Protection and other law enforcers