



Global Monitoring



Report on the
status of action against commercial
sexual exploitation of children

JAPAN



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Glossary of terms and acronyms

AIDS: Acquired Immune Deficiency Syndrome

CBO: Community-based organisation

Code of Conduct: A code for travel and tourism companies, providing guidance on the protection of children from sexual exploitation

CPASS: Child Pornography Automatic Searching System

CRC: Convention on the Rights of the Child

CSE: Commercial sexual exploitation

CSEC: The commercial sexual exploitation of children consists of criminal practices that demean, degrade and threaten the physical and psychosocial integrity of children. There are three primary and interrelated forms of commercial sexual exploitation of children: prostitution, pornography and trafficking for sexual purposes. Commercial sexual exploitation of children comprises sexual abuse by the adult and remuneration in cash or in kind to the child or a third person or persons.

CST: Child sex tourism, or the commercial sexual exploitation of children by men or women who travel from one place to another, usually from a richer country to one that is less developed, and there engage in sexual acts with children, defined as anyone under the age of 18.

ECPAT: End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes

Grooming: Preparing a child for sexual abuse and exploitation

HIV: Human immunodeficiency virus

ICT: Information and communication technologies

ICTSD: International Centre for Trade and Sustainable Development

ILO: International Labour Organization

ILO/IPEC: International Labour Organization/International Programme on the Elimination of Child Labour
INGO: International non-governmental organization
INHOPE: International Association of Internet Hotlines
IOM: International Organization for Migration
ISP: Internet service provider
IT: Information technology
JATA: Japan Association of Travel Agent
JNATIP: Japan Network against Trafficking in Persons
JTB: Japan Travel Bureau
MoU: Memorandum of Understanding
NGO: Non-governmental organization
NPA: National Plan of Action
NWEC: National Women's Education Centre
OTOA: Overseas Tour Operators Association of Japan
STIs: Sexually transmitted infections
UN: United Nations
UNDP: United Nations Development Programme
UNESCAP: United Nations Economic and Social Commission for Asia and the Pacific
UNHCR: United Nations High Commissioner for Refugees
UNICEF: United Nations Children's Fund
UNOHCHR: United Nations Office of the High Commissioner for Human Rights
WHO: World Health Organization
WTO: World Tourism Organization

Foreword

Ten years have passed since the First World Congress against Commercial Sexual Exploitation of Children (CSEC) was held in 1996 in Stockholm, Sweden. The Stockholm Congress was a landmark event, providing testimony that convinced the world that sexual violations against children exist in all nations, irrespective of cultural differences or geographic location. It marked the first public recognition by governments of the existence of CSEC and resulted in a commitment to a global Declaration and Agenda for Action, which was formally adopted by 122 governments, as a guide to the specific measures that must be taken for counteraction.

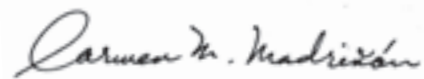
Since 1996, many actors around the world have focused their efforts around this common Agenda for Action and more government and non-government entities have linked, to ensure positive change for children and to protect their right to live free from sexual exploitation. This broad societal alliance (bolstered by a Second World Congress held in Yokohama in 2001, during which the number of countries adopting the Agenda rose to 159 - a figure which has since risen to 161) has made progress in improving protection for children from commercial sexual exploitation. However, the increasing sophistication of resources available to those who seek to exploit children have grown in equal measure. Responding to these challenges requires far more coordinated and targeted work to be undertaken to avoid retrogression.

Experience demonstrates that the level of responsibility and role that a government takes to set and uphold standards of protection, like the lead taken for protecting children's rights, determines the nature, quantity and quality of what the country achieves for its children. Governments can and have accelerated progress for implementation of the Agenda for Action, often opening new and important channels for such work. Nevertheless, their actions have not been uniform and, as these country profiles attest, far more urgent work must be done to protect children from such heinous violations, as these are still perpetrated with impunity in many countries.

This report aims to provide a baseline of information on actions taken and remaining gaps for addressing CSEC in each country, based on the framework of the Agenda for Action, to enable more systematic assessment of progress on implementation of this commitment. It also seeks to contribute to other international mechanisms that exist to protect children's rights; the *Convention on the Rights of the Child (CRC)* and the *Optional Protocol on the sale of children, child prostitution and child pornography* so as to strengthen the implementation and action against commercial sexual exploitation of children at all levels.

Another important objective of these reports is to stimulate the exchange of experience and knowledge among countries and different actors to create a dialogue that can further work against CSEC. While much has been achieved over the last 10 years, many gaps still remain. The implementation of the Agenda for Action is urgently required, for as the reports clearly illustrate, there is a compelling need for global action to protect children from these inhuman violations.

This project is the result of a broad and global collaboration. ECPAT International (EI) would like to thank all those who participated in the work and contributed their inputs, in particular the ECPAT member groups in the countries examined, local experts who provided valuable information and insights, other organisations that shared their experience and information, the dedicated staff and volunteers in the Secretariat of EI and the generous donors who backed the project (more extensive acknowledgements can be found in the Regional Report). This work would not have been realised without their support and solidarity.



Carmen Madriñán
Executive Director, ECPAT International

Methodology

The Agenda for Action against Commercial Sexual Exploitation of Children provides a detailed framework and categories of actions to be taken by governments in partnership with civil society organizations and other relevant actors for combating commercial sexual crimes against children. Broadly, these actions are focused on: 1) Coordination and Cooperation; 2) Prevention; 3) Protection; 4) Recovery, Rehabilitation and Reintegration; and 5) Child Participation. The Agenda for Action is thus the formal and guiding structure used by governments that have adopted it and committed to work against CSEC. As such, the Agenda for Action is also the main organising framework for reporting on the status of implementation of the Agenda as seen in the World Congress of 2001 and in the Mid-Term Review meetings held between 2004 and 2005. It has been used in the same way to structure and guide the research, analysis and preparation of information presented in these reports on the status of implementation of the Agenda in the individual countries.

Preparatory work for this report involved a review of the literature available on sexual exploitation for each of the countries where ECPAT works. A number of tools were prepared, such as a detailed glossary of CSEC terms, explanatory literature on more difficult themes and concepts and a guide to relevant CSEC-related research tools, to assist researchers in their work and to ensure consistency in the gathering, interpreting and analysing of information from different sources and parts of the world.

Early desktop research revealed a lack of information in the areas of Recovery, Rehabilitation and Reintegration; and Child Participation. After extensive efforts to collect information relevant to these areas for each of the countries covered, it was decided that as this information was not consistently available, the reports would focus only on those areas of

the Agenda for Action where verifiable information could be obtained. Thus, the report covers: Coordination and Cooperation; Prevention; and Protection, and where information on the other two areas was available, it has been included under the specific country or in the regional overview.

Research of secondary sources, including CRC country reports, alternative CRC reports, the reports of the Special Rapporteurs, submissions for the recent UN Study on Violence against Children, as well as research and field studies of ECPAT, governmental and non-governmental organizations, and UN agencies, provided the initial information for each report. This information was compiled, reviewed and used to produce first draft reports. In-house and consultant specialists undertook a similar process of review to generate information on specialised areas of the reports, such as the legal sections. Nevertheless, researchers often encountered a lack of information. While sources also included unpublished reports and field and case reports of ECPAT and other partners, many countries lacked up-to-date data and information on areas relevant to this report.

Despite these limitations, sufficient information was gathered to provide a broad overview of the situation in each country. Subsequently, first drafts were prepared and shared with ECPAT groups, which then supplemented the information with other local sources and analysis (taking care to identify them and source appropriately). Upon receipt of these inputs, a series of questions were generated by the ECPAT International team for deeper discussion through teleconferences, which involved ECPAT groups and specialists invited by them. The information from these discussions was used to finalise inputs to each of the reports. These consultations proved to be invaluable for analysis of the country situation.

They also served as a measure for triangulating and validating information as different actors offered their perspective and analysis based on their direct work.

As previously noted, the information of each country report is organised to correspond to the structure of the Agenda for Action. Thus all reports feature: (i) an overview of the main CSEC manifestations affecting the country; (ii) analysis of the country's National Plan of Action (NPA) against CSEC and its implementation (or the absence of an NPA); (iii) overview and analysis of coordination and cooperation efforts during the period under review; (iv) overview and analysis of prevention efforts; (v) overview and analysis of protection efforts, which includes detailed information on national legislation related to CSEC (see www.ecpat.net for further details); and (vi) priority actions required.



JAPAN

Matchmaking or dating websites have become a well-known channel for commercial sexual exploitation of children (CSEC) in Japan. Many underage Japanese schoolgirls fall prey to '*enjo kosai*' ('compensated dating') by using '*deai kei*' websites: through which they can make their contact details available, and use pagers, computers and mobile phones (the most common method) to arrange 'dates' with customers who are older and often married. Research has shown that many such girls do not engage in '*enjo kosai*' out of poverty, but rather to be able to purchase brand name clothes, bags, shoes, mobile phones, etc., which, according to them, boosts their self-esteem. They often come from dysfunctional families (sometimes middle-class) or experience problems at school. Some of them suffer the additional abuse of being videotaped during sexual activity.¹

Pornographic images featuring children from other Asian countries are sold in some public places and on the Internet, taking advantage of the loopholes in the anti-CSEC law enacted in 1999 and amended in 2004. Furthermore, child pornography is widely seen in '*anime*' or '*manga*' (Japanese comics) and in computer games, which are available in bookshops and convenience stores and often depict female child characters in pornographic and erotic contexts. Sections of civil society, including producers and consumers of child pornography, some academics and lawyers, seem to be desensitised and accepting of this form of child pornography on the grounds of 'freedom of expression', which is prioritised to the detriment of greater protection for children. They argue that there are no actual victims or real children portrayed in such materials, and fail to grasp the implications that their availability may have on public attitudes towards children and on sexual crimes against children.² Even though little research has been conducted in Japan to demonstrate such inter-relationships, studies undertaken in other regions of the world have clearly exposed it.

When a society fails to realise the vulnerability of children

The existence of pervasive misconceptions detrimental to the protection of children is evident in Japanese society. Child pornography is widely available in comics and computer games,

justified as a right to freedom of expression. Child victims of trafficking are often perceived as illegal immigrants. The *Deai Kei Site Regulation Law* penalises minors who send soliciting messages through 'deai kei' websites (even though in practice they are usually referred to a Family Court for counselling and protective measures); girls involved in 'enjo kosai' receive little sympathy from the public and are rather seen as 'bad' girls who make their own choices to gain extra income to buy expensive goods. Because Japanese society tends to consider children involved in commercial sexual exploitation as delinquents, sexual offences against them are seldom punished appropriately.

As in other Asian countries, often children are not seen as people in their own rights who need adults to be responsible for their development and protection. Instead they are blamed for their own exploitation or given responsibilities far heavier than they can withstand. The general public and policy makers must become more aware of the need to foster understanding of children's needs and rights so as to have a far-reaching impact on how to protect children effectively in Japan.

According to ECPAT/STOP Japan, there are media reports of cases of Japanese sex tourists found exploiting children in other Asian countries, which often do not lead to concrete police action and arrests. There is not much information available on the occurrence of internal child sex tourism.

Japan is a destination country for the trafficking in human beings for sexual purposes. The Japanese mafia, 'yakuza', is often involved in the trafficking process, as are international crime networks operating both within Japan and in sending countries.³ Although there is little evidence or research on the extent of trafficking in children in Japan, a number of news reports indicate that children are found among trafficked victims. In July 2005, a group of girls trafficked for sexual purposes were between their late teens and early twenties.⁴ Many trafficked girls come from Latin America, Eastern Europe and Southeast Asia,⁵ in particular Indonesia, the Philippines and Thailand. They enter Japan with false passports with their ages increased, lured with promises of a modeling job or work in the catering and entertainment business. Some also arrive as 'mail-order brides', and apply for spouse visas or entertainer visas, which are often not genuine. While some girls are aware that they will work in the sex trade, they are unaware of the abuse and hardship attached. They usually suffer sexual and physical violence as well as threats that their family members will be harmed if they escape or agree to testify in a Court process.

Japan adopted the *Stockholm Declaration and Agenda for Action* in 1996 and hosted the Second World Congress in Yokohama in 2001.

NATIONAL PLAN OF ACTION (NPA)

The *Action Plan against Commercial Sexual Exploitation of Children*⁶ was completed in 2001 (it is an open ended plan), facilitated by the Ministry of Foreign Affairs. However, it does not feature particularly clear goals or objectives, makes no mention of responsible implementing agencies or a central coordinating body, and lacks a timeframe and indicators of progress, thus hindering monitoring of its effectiveness. Also, the activities outlined in the Action Plan were already being carried out at the time, and are therefore not based on wide consultation with key stakeholders regarding the most pressing actions that needed to be accomplished. For all these reasons, child rights advocates usually undertake lobbying by referring to relevant legislation, and not to the above-mentioned Action Plan.

The *National Plan of Action to Prevent and Eradicate Human Trafficking*⁷ was formulated in 2004. Besides giving limited attention to child victims, the Plan fails to define what constitutes ‘trafficking’, ‘smuggling’, and ‘illegal migrant’. This has contributed to negative perceptions by law enforcers and the public of trafficked children as ‘illegal migrants’ rather than victims of a criminal activity. Recovery, rehabilitation and reintegration services for children are still not adequately provided. The NPA has nevertheless fostered improved law enforcement against human trafficking in general.

In 2003, the Headquarters for Youth Development at the Cabinet Office formulated a *National Youth Development Policy*.⁸ While it does not specifically address CSEC, it promotes measures against crimes that harm the welfare of youth, including crimes related to the prostitution of children and child pornography.

COORDINATION AND COOPERATION

Local and National Level

Coordination at local and national levels has been taken up mainly by local non-governmental organizations (NGOs), sometimes in collaboration with law enforcement and the private sector. Regrettably, very little coordination has been undertaken in relation to implementing the *Action Plan against Commercial Sexual Exploitation of Children* adopted in 2001, as it is not clear who is responsible for undertaking and coordinating the planned activities. Japan has no national focal point on CSEC.

An Inter-Ministerial Liaison Committee for Trafficking (Task Force), comprising the Ministry of Health, Labour and Welfare, the Ministry of Foreign Affairs, the Ministry of

Justice and the National Police Agency⁹ was set up in April 2004 as a coordinating body to combat trafficking in persons.¹⁰ Although the Task Force promotes effective measures to prevent and eliminate trafficking in persons as well as protecting victims of trafficking, it does not specifically focus on trafficking in children for sexual purposes.

Regional and International Level

The Government of Japan has engaged in international coordination efforts against CSEC with assistance from various NGOs, particularly in terms of facilitating investigations into sexual offences against children committed abroad, and on issues related to child trafficking.

In February 2006, the Ministry of Foreign Affairs, the National Women's Education Center (NWECC), the International Organization for Migration (IOM) and the Japan Network against Trafficking in Persons (JNATIP) organised an 'International Symposium on Trafficking in Persons'. Although not focused on CSEC but on trafficking in women in general, the Symposium was quite effective in terms of improving networking on trafficking issues with other countries in the region.¹¹

Through the Trust Fund for Human Security, Japan supports projects to address CSEC and trafficking in persons in sending countries such as Thailand, Cambodia, Vietnam and Lao PDR. Activities include training and international conferences targeting immigration officials, as well as repatriation programmes led by the IOM.

PREVENTION

Few prevention initiatives relating to CSEC have been undertaken in Japan, although they seem to have slowly increased in the last few years (particularly in relation to the safe use of the Internet by children). The 2004 amendments to the *Law on Punishing Acts related to Child Prostitution and Child Pornography, and on Protecting Children* has had a significant deterrent effect. However, continuous efforts for more effective preventive measures are necessary.

Japanese leading tourism companies engage in combating CSEC

The *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism* - a project locally initiated by ECPAT STOP/Japan and ECPAT International, and supported by the United Nations Children's Fund (UNICEF) and the World Tourism Organization (WTO) - was launched in Japan in 2005. Her Imperial Majesty Princess Takamado was present at the launch and addressed an audience of tourism professionals and media representatives. Over 60 Japanese companies operating in the tourism industry committed to implementing the Code in their operations. These include the Japan Association of Travel Agents (JATA), Japan's top destination management company, and one of the largest tour operators worldwide, the Japan Travel Bureau (JTB) and the Overseas Tour Operators Association of Japan (OTOA). An operational committee has been formed to coordinate related activities. The involvement of Japan's leading travel groups is all the more welcome given the extent of their operations in destinations such as Cambodia, the Philippines and Indonesia, which are known to be affected by child sex tourism.

The Ministry of Internal Affairs and Communications has assisted telecommunications carrier consortiums to formulate guidelines on independent measures to counter illegal and harmful content online. Guidelines for codes of practice for Internet service providers (ISPs) were formulated by the Telecom Service Association in 1998 (revised in 2003), and guidelines on libel and privacy were formulated by several telecommunications carrier consortiums in 2002, enabling ISPs to easily assess which transmissions should not be allowed and when users' privacy is infringed upon (for instance by the transmission of child pornography).

In 2006, the Internet Association Japan, the Ministry of Internal Affairs and Communication, the National Police Agency and information technology (IT) experts collaborated to draft guidelines on operating a hotline. The Internet Hotline Centre provides the public the opportunity to report illegal or harmful information found on the Internet (www.internethotline.jp), which is then followed up by the police and ISPs accordingly.¹² The Centre is currently preparing to join the International Association of Internet Hotlines (INHOPE).

An educational programme on violence against children (in which one component focuses on equipping children with skills to protect themselves from sexual abuse and exploitation) was implemented and has been led by ECPAT Japan Kansai since July 2005. The programme is aimed at students in grades 1 to 6 and the higher school levels. The programme also includes training teachers to deepen their understanding of the issues and increase their skills to enable them to conduct educational sessions for their students.

The Ministry of Justice established a national helpline “Dial 110” as well as counselling offices in the District Legal Affairs Bureau. Volunteers are recruited to provide services to children, such as counselling related to commercial sexual exploitation.¹³

PROTECTION

Japan ratified the *Convention on the Rights of the Child (CRC)* in 1994. In ratifying the CRC, the Government of Japan made two declarations; first, that the first paragraph of Article 9 should not apply in cases where children are separated from their parents as a result of deportation under Japanese immigration law;¹⁴ second, that States Parties’ obligation under paragraph 1 of Article 10 to review applications to enter or leave a State Party for purposes of family reunification “in a positive, humane and expeditious manner” should not be interpreted to affect the outcome of such applications.

ILO Convention No. 182 was ratified in 2001. Japan signed the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)* in 2002, but had not ratified it at the time of writing. Japan ratified the *Optional Protocol on the sale of children, child prostitution and child pornography (Optional Protocol)* in 2005 and signed, but has not ratified, the *Convention on Cybercrime*.¹⁵

Legislation

In 1999, Japan enacted the *Law on Punishing Acts related to Child Prostitution and Child Pornography, and on Protecting Children* (which also has provisions on trafficking in children for sexual purposes). In 2003, ECPAT/STOP Japan and the Japan Committee for UNICEF took the lead in coordinating another hundred organisations to issue a joint NGO statement demanding amendments to this law. Such concerted efforts were partly successful, and an amendment came into effect in July 2004, with due consideration given to certain requirements of the *Optional Protocol* and the Council of Europe’s *Convention on Cybercrime*. Nevertheless, the criminalisation of the mere possession of child pornography was still disregarded.

Prostitution of Children

Japanese law generally conforms to international standards related to the prostitution of children, and even offers further protection in some areas: for example, actual remuneration as well as the promise of remuneration, is punishable.¹⁶ Yet it also gives less protection in other areas: for example, the law contains a cautionary provision stating that application of the law should not violate a person's rights without due cause (this provision applies to all aspects of the law and is not limited to child prostitution).¹⁷ In practice, this caution may make law enforcement and judicial officers reluctant to enforce the law for fear of violating a person's rights. It has also been used in the judicial processes as a defence argument. Furthermore, in terms of punishment, a person who engages in, facilitates or solicits the prostitution of children may be (and indeed has been in many cases) subject only to a fine or probation, instead of imprisonment. Such punishment does not appear to comply with the *Optional Protocol's* requirement that penalties for child prostitution take into account the grave nature of the crime.¹⁸

Japanese law now prohibits engaging in, facilitating, and/or soliciting the prostitution of a child; consistent with international law, a child is defined as a person under 18 years of age.¹⁹ Child prostitution includes sexual intercourse; acts similar to sexual intercourse; acts that satisfy one's sexual curiosity; and touching a child's genital organs or making a child touch one's genital organs, in return for remuneration.²⁰ Remuneration can be given or promised to be given to: a child; a person who facilitates or solicits the prostitution of a child; a person who has parental power over a child; a guardian of a child; or a person who takes care of or supervises a child.²¹

Punishment for engaging in, facilitating, and/or soliciting the prostitution of a child varies, with more stringent punishment for those engaged in the business of facilitating and soliciting child prostitution.²² Those who engage in child prostitution (but not the children themselves) may be imprisoned with labour for up to five years or fined up to three million yen (approx. US\$25,640).²³ Those who facilitate or solicit the prostitution of a child may be imprisoned with labour for up to five years or fined up to five million yen (approx. US\$42,740).²⁴ And, those who engage in the business of facilitating or soliciting child prostitution may be imprisoned with labour for up to seven years and fined up to 10 million yen (nearly US\$485,540).²⁵

Trafficking in Children for Sexual Purposes

Japan's failure to ratify the *Trafficking Protocol* is a significant gap in its protection of children against trafficking for sexual purposes, but in preparing to ratify the *Trafficking Protocol*, Japan recently enacted legislation that criminalises some acts that constitute trafficking. The *Immigration*

Control Act meets some of the international standards for protecting children, but limits trafficking to acts of kidnapping, buying and selling, rather than including the mere transporting, transferring, harbouring or receipt of a person for purposes of exploitation. Furthermore, the *Immigration Control Act's* provisions related to children are limited to “controlling” a person under 18 years of age. This should be expanded to include all the acts outlined in the *Trafficking Protocol*. Similarly, provisions related to trafficking in the *Law on Punishing Acts related to Child Prostitution and Child Pornography, and on Protecting Children* are limited to buying or selling a child, or transporting a child who has been abducted, kidnapped, bought or sold in a foreign country. Again, the acts constituting trafficking should be expanded to include all the acts outlined in the *Trafficking Protocol*. Finally, enforcement of the trafficking provisions in the *Law on Punishing Acts related to Child Prostitution and Child Pornography, and on Protecting Children* is still deficient. This law has been criticised for not going far enough in prosecuting offenders.

A section of the *Law on Punishing Acts related to Child Prostitution and Child Pornography, and on Protecting Children* prohibits buying or selling a child for the purposes of prostitution or pornography.²⁶ The punishment for this violation is imprisonment with labour for not less than one year and not more than ten years.²⁷ The law also prohibits Japanese nationals from transporting a child who has been abducted, kidnapped, sold or bought in a foreign country for the purposes of prostitution or pornography.²⁸ The punishment for this violation is imprisonment with labour for a limited term of not less than two years.²⁹ The law also punishes attempts at these crimes.³⁰

In 2005, the Japanese *Penal Code*, the *Immigration Control Act*, and other relevant laws were amended to prepare for the ratification of the *Trafficking Protocol*. These amendments provide clearer definitions of the acts that constitute trafficking and the roles of those involved in the process, as well as stricter penalties.

The *Immigration Control Act* 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. Penalties for violations may be between one to ten years' imprisonment.³¹ This law also 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. Violators may be punished with three months' to five years' imprisonment.³² The *Immigration Control Act* also makes it illegal to control a person under 18 years of age for the purpose of making a profit, committing an indecent act, or causing injury to the trafficked person's life or physical being. Punishment may be up to seven years' imprisonment.³³

The *Immigration Control Act* also increases protection for trafficked persons. The law stipulates that trafficking victims should not be denied permission to land in Japan or to be deported on the basis of having engaged in prostitution, and that trafficking victims should be eligible for special permission to land and reside in Japan.

Child Pornography

Japanese law prohibiting child pornography needs strengthening in order to meet international legal standards. The law is limited only to visual and digital representations and images of an entire child, while the *Optional Protocol* also includes audio materials and the depiction of parts of a child.³⁴ Japanese law also fails to prohibit simulated images, which constitutes a major legal loophole considering that simulated child pornography materials in the form of ‘anime’ or ‘manga’ are widely available and consumed in the country. Furthermore, Japanese law does not punish the mere possession of child pornography; its prohibitions are limited to distributing, selling, lending as a business, or displaying child pornography in public.³⁵

Japanese law defines child pornography as photos, videotapes and other visual materials that depict a recognisable child in poses related to: sexual intercourse; acts similar to sexual intercourse; touching the child’s genital organs or having the child touch a person’s genital organs in order to arouse the viewer’s sexual desire; a partially or totally naked child in order to arouse the viewer’s sexual desire.³⁶ Producing, distributing, selling, lending, possessing or transporting child pornography as a business, or displaying child pornography in public is prohibited.³⁷ It is further prohibited to import into or export child pornography from Japan, and, for Japanese nationals, to import into or export child pornography from a foreign country, in order to distribute, sell, lend as a business or display child pornography in public.³⁸ For all of these cases, but varying according to each category, the penalty may be imprisonment with labour for up to three years or a fine of up to three million yen (approx. US\$25,640).³⁹ The penalties for the crimes above related to displaying child pornography in public increase to up to 5 years’ imprisonment or a five million yen fine (approx. US\$42,740).

Other relevant laws include the *Law on Restrictions on the Liability for Damages of Specified Telecommunications Service Providers* and the *Right to Demand Disclosure of Identity Information of the Sender*, which came into force in May 2002. They clarify the scope of liability of Internet service providers who transmit information that infringes the privacy of an individual person, which includes child pornography.

The 'Deai Kei' Site Regulation Law

According to the 2003 *Deai Kei Site Regulation Law*,⁴⁰ minors are prohibited from accessing 'deai-kei' websites (matchmaking websites that facilitate prostitution of children), however no penalties apply. Minors who solicit for compensated dating are supposed to be penalised just as adults are, but in practice only the adults who send communications for this purpose are fined, up to one million yen (approx. US\$8,550). Children are usually referred to a Family Court for counselling and protective measures, according to the provisions of the *Juvenile Law*. After the *Deai Kei Site Regulation Law* was enacted, access to the 'deai-kei' websites and obvious calls for compensated dating, especially those made by children, were drastically reduced for a while; but more disguised soliciting calls have appeared since.

Extraterritorial Legislation

In legislation related to the commercial sexual exploitation of children, Japanese law includes a provision whereby Japanese nationals who engage in child prostitution, child pornography, and trafficking in children outside Japan may be subject to Japanese criminal laws.⁴¹

Child Protection Units

The Office for Juvenile Protection was established by the National Police Agency in 1999, and has since cooperated actively with NGOs on children's matters. Japan's law contains several provisions to assist and protect child victims of commercial sexual exploitation, in line with many of the provisions of the *Optional Protocol*.⁴² In most cases, however, Japanese law merely suggests, rather than mandates, what measures should be taken. For example, in several instances the law asks that State and public entities "endeavour" to provide training for those who assist child victims, rather than providing training outright. This makes the law much weaker than if it properly followed the *Optional Protocol* and mandated measures such as training and education.

A Cybercrime Task Force division was established in 2004 to improve action against online child pornography and online crime. Working in cooperation with the Office for Juvenile Protection, the Task Force acts as the contact point for international cooperation, advises the local police on investigations, prepares draft laws/amendments and policies on information technologies security and raises public awareness on the issue.⁴³

When investigating crimes related to child prostitution, child pornography and child trafficking, law enforcers must take the child's rights and characteristics into account and refrain from harming his/her reputation or dignity. To this end, State and local public entities must "endeavour" to train officials to be sensitive to children's rights.⁴⁴ Furthermore,

in cases brought under the *Law on Punishing Acts related to Child Prostitution and Child Pornography, and on Protecting Children*, information that could be used to identify a child victim, such as name, age, occupation, school attended, etc. must not be made public.⁴⁵ The law also requires “relevant administrative agencies” to take measures such as consultations, temporary guardianship, or institutionalisation, to protect children who have suffered mental and/or physical damage as a result of being prostituted or used in the making of pornography.⁴⁶ To achieve this, State and local public entities must “endeavour” to promote research and studies to protect children, educate professionals who work with child victims, and reinforce the networks of public and private organisations that assist child victims.⁴⁷

Support Services for Children

Although a number of measures are in place to address the needs of child victims of commercial sexual exploitation, a clear understanding of the commercial sexual exploitation of children and the impact it makes on the lives of child victims is limited, as is the availability of appropriate services to provide recovery, rehabilitation

and reintegration support in Japan. Despite the fact that a number of measures to this end are stated in the law and the National Plan of Action against Commercial Sexual Exploitation of Children, in practice, the implementation of these mechanisms is still lacking.

Training Law Enforcement Personnel

In 2002, the National Police Agency - one of the forerunners in assisting child protection efforts - established the Child Pornography Automatic Searching System (CPASS). In 2003, due to the success of this system, pornographic images of children were found on newsgroups posted from the United States, New Zealand, Canada, the United Kingdom and Australia. The governments of these countries were informed through the International Criminal Police Organisation. Every year the National Police Agency hosts seminars and conferences to facilitate cooperation on international investigations on CSEC and to form links with NGOs in Southeast Asia. It has also undertaken measures to facilitate CSEC prosecutions, such as assigning female officers to interview female victims and providing counselling and medical assistance as required.

In March 2005, a symposium on ‘Child Pornography: Victimisation on the Internet’ was organised in Tokyo by ECPAT/STOP Japan, in cooperation with the Ministry of Foreign Affairs, the UNICEF Office for Japan and the NGO International Soroptimist. It focused on enhancing law enforcement and on support systems to both victims and offenders.



PRIORITY ACTIONS REQUIRED

- The *Action Plan against the Commercial Sexual Exploitation of Children* needs to be reviewed in order to define goals and objectives, the coordinating and implementing organisations, a timeframe, and monitoring and evaluation mechanisms clearly. The *National Plan of Action to Prevent and Eradicate Human Trafficking* also needs to be reviewed so that the particular question of trafficking in children can be properly addressed.
- The Government must develop policies and programmes to tackle trafficking in children for sexual purposes, as the current anti-trafficking action is focused on trafficking in persons in general. A survey that would better assess the situation of children in this regard is recommended so that appropriate action can be designed and implemented.
- Japanese law on child pornography needs to be reviewed as a matter of urgency. It is imperative that simulated child pornography images be prohibited – given their wide availability in the country in the form of ‘*manga*’, as there is evidence to suggest that such images promote sexual violence against children. Furthermore, the mere possession of child pornography must be criminalised. The law must also include audio materials and the depiction of parts of a child.
- Improved enforcement of the *Deai Kei Site Regulation Law* is necessary to protect children from becoming involved in commercial sexual exploitation. Although the *Deai Kei Site Regulation Law* punishes those who exploit children using such websites, it should be amended to provide stronger penalties, and to regulate preventive actions to be undertaken by the private sector, especially the IT industry and the media. At the same time, the criminal penalties for children who solicit using ‘*deai-kei*’ websites should be removed from this law.
- Japanese legislation regulating trafficking in children must be reviewed so that acts constituting trafficking include all those outlined in the *Trafficking Protocol*. Also, measures must be taken urgently to ensure proper enforcement of the trafficking

provisions in the *Law on Punishing Acts related to Child Prostitution and Child Pornography, and on Protecting Children*.

- ✎ Japanese law on CSEC should be reviewed so that the cautionary provision by which ‘the application of the law should not violate a person’s rights without due cause’ does not compromise the punishment of child sex offenders. Furthermore, penalties for those engaging in, facilitating or soliciting child prostitution should be made much more severe, taking into account the grave nature of such crimes.
- ✎ Japan must ratify the *Trafficking Protocol* and the *Convention on Cybercrime*.
- î Law enforcement must be enhanced to combat ‘enjo kosai’ and facilitating channels such as the ‘deai-kei’ websites more effectively. Training for law enforcers, judges and prosecutors on this particular point is thus needed.
- ✎ Establishing a national focal point on CSEC is recommended to counter the lack of coordinated action against the problem in Japan. The Ministries of Education and Social Affairs in particular could play a stronger role in this regard, especially in improving coordination on preventive and recovery/rehabilitation measures.
- ✎ Structured awareness raising targeting children is highly recommended to enhance prevention, with a special focus on the consequences of engaging in commercial sex and on safe Internet use. Access to recovery and rehabilitation services for victimised children must also be ensured, especially to prevent them from falling into prostitution again.
- ✎ Public sensitisation, advocacy and training are urgently required to increase understanding of CSEC and children’s rights among civil society, policy makers and the private sector (especially the media and the IT sector).
- ✎ Substantial care programmes and support systems for children victimised by commercial sexual exploitation must be established in Japan as a matter of urgency.
- ✎ In particular, targeted support should be systematically provided to schoolgirls who fall prey to ‘enjo-kosai’ and make use of ‘deai kei’ websites to enable them to recover from such experiences. These girls often fail to see themselves as victims who are being exploited by a variety of actors and businesses, and the exploiters take advantage of this.

Endnotes

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- ¹⁴ CRC, Art. 9, para. 1. states that "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence."
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- ¹⁷ Ibid. Section 3.
- ¹⁸ *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and*

- child pornography*, Art. 3.3.
- ¹⁹ *Law on Punishing Acts related to Child Prostitution and Child Pornography, and on Protecting Children*, 1999, Sections 2.1, 4-6.
- ²⁰ *Ibid.* Section 2.2.
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- ²² *Law on Punishing Acts related to Child Prostitution and Child Pornography, and on Protecting Children*, 1999, Sections 4-6.
- ²³ *Ibid.* Section 4.
- ²⁴ *Ibid.* Sections 5.1, 6.1.
- ²⁵ *Ibid.* Sections 5.2, 6.2.
- ²⁶ *Ibid.* Section 8.1. See also *ibid* Sections 2.2, 2.3 (defining child prostitution and child pornography).
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- ²⁸ *Ibid.* Section 8.2
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- ³⁴ See *Law on Punishing Acts related to Child Prostitution and Child Pornography, and on Protecting Children*, 1999, Section 3 (defining child pornography as photos, videotapes and other visual materials).
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- ⁴⁶ *Ibid.* Section 15.
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