



Status of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in National Law

JAPAN

Applicability of the Convention and its Optional Protocols

Convention on the Rights of the Child (CRC)	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC)	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC)
<p>Signature: September 21, 1990</p> <p>Ratification: April 22, 1994</p>	<p>Signature: May 10, 2002</p> <p>Ratification: August 2, 2004</p>	<p>Signature: May 10, 2002</p> <p>Ratification: January 24, 2005</p>
<p>Reservations: <i>In applying paragraph (c) of article 37 of the Convention on the Rights of the Child, Japan reserves the right not to be bound by the provision in its second sentence, that is, 'every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so', considering the fact that in</i></p>	<p>Declarations: <i>The Government of Japan, by relevant laws and regulations, recruits only those who are at and above the minimum age of 18 as a member of the Japan Self-Defense Forces.</i></p>	<p>Declarations: None</p>

<p><i>Japan as regards persons deprived of liberty, those who are below twenty years of age are to be generally separated from those who are of twenty years of age and over under its national law.</i></p> <p>Declarations:</p> <p><i>1. The Government of Japan declares that paragraph 1 of article 9 of the Convention on the Rights of the Child be interpreted not to apply to a case where a child is separated from his or her parents as a result of deportation in accordance with its immigration law.</i></p> <p><i>2. The Government of Japan declares further that the obligation to deal with applications to enter or leave a State Party for the purpose of family re-unification 'in a positive, humane and expeditious manner' provided for in paragraph 1 of article 10 of the Convention on the Rights of the Child be interpreted not to affect the outcome of such applications.</i></p>		
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OPSC Status in National Law

The Japanese Constitution does not specify the status granted to international treaties in national law, but the prevailing view is that ratified treaties such as the OPSC would take precedence over domestic laws.¹ Japanese courts' ability to invoke or apply the OPSC is also unclear, as the Government of Japan explained in its 2003 report to the Committee on the Rights of the Child that “there is no precedent of a court decision explicitly showing whether or not the direct application of the provisions of the Convention is possible”.² Although it is not binding, the Government further

¹ International Humanitarian Law, National Implementation: Japan, General Comment – Constitutional Structure – Implementing Institutions, available at <http://www.icrc.org/ihl-nat.nsf/WebALL!OpenView&Start=1&Count=999&Expand=89.1#89.1>

expressed a viewpoint that “the manner of application should be determined on a case-by-case basis, with due regard to the purpose and content of the provisions of the Convention.”³

Sale of Children (“any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”)

MEASURE REQUIRED (PROHIBITION)	CURRENT LAW	LEGAL REFORM	COMPLIANCE
Selling children (Art. 3.1. (a))	Buying a person under 20 years of age is punishable by 3 months' to 7 years' imprisonment with labour (Penal Code, Art. 226-2). ⁴ Buying a person of any age “for the purpose of profit, obscenity or injury” is punishable by 1 year to 10 years' imprisonment with labour, and receiving a person who has been sold in this manner is punishable by 6 months' to 7 years' imprisonment with labour (Penal Code, Arts. 226-2, 227). Where money does not change hands, transferring custody of a child to a person likely to commit a criminal act is also punishable by up to 3 years' imprisonment with labour and a fine of	In 2003, Article 60 of the Child Welfare Law was amended to raise the maximum punishment for transferring custody of a child to a person likely to commit a criminal act from previous levels of up to 1 year's imprisonment and a fine of up to 300,000 yen. ⁷ In 2005, Articles 226-2 and 226-3 of the Penal Code were introduced to prohibit the buying and selling of persons. The Immigration Control and Refugee Recognition Act and other relevant laws were also amended “to provide clearer definitions of the acts that constitute trafficking and the roles	On the sale of children not being specifically prohibited: “The Committee is concerned that, despite the volume of existing legislation in this area, harmonization between domestic law and the provisions of the Optional Protocol remains limited and that the sale of children is not included as a specific offence.” ⁹ “The Committee recommends that the State party continue and complete the process of harmonizing its national legislation with the Optional Protocol.” ¹⁰ “The Committee reminds the State

2 CRC/C/104/Add.2, 24 July 2003, Report of State party to the Committee on the Rights of the Child, para. 13, available at <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/104/Add.2>.

3 CRC/C/104/Add.2, 24 July 2003, Report of State party to the Committee on the Rights of the Child, para. 13.

4 The Penal Code as amended through April 2009 is available in Japanese and English via Japanese Law Translation at <http://www.japaneselawtranslation.go.jp/law/detail/?id=1960&vm=04&re=02&new=1>.

	<p>up to 1,000,000 yen (Child Welfare Law, Arts. 34, 60).⁵</p> <p>Japan's Immigration Control and Refugee Recognition Act includes buying, selling, and controlling or delivering to persons who will control children under 18 “for the purpose of profit, indecency or threat” in its definition of “trafficking” (Immigration Control and Refugee Recognition Act, Art. 2), although notably, the term “trafficking” is not used in the offences set out below.⁶</p> <p>The Immigration Control and Refugee Act provides that smuggling persons into Japan or receiving smuggled persons in Japan is punishable by up to</p>	<p>of those involved in the process, as well as stricter penalties.”⁸</p>	<p>party that its legislation must satisfy its obligation with regard to the sale of children, a concept which is similar, though not identical, to trafficking in persons, in order to adequately implement the provisions regarding the sale of children contained in the Optional Protocol.”¹¹</p> <p>“The Committee is concerned that the offences set out in the Optional Protocol are not fully covered under the State party’s penal law in accordance with articles 2 and 3 of the Optional Protocol, and that, particularly, there is no definition of the sale of a child.”¹²</p> <p>“The Committee recommends that the State party revise and bring its Penal Code into full compliance with articles</p>
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- 5 The Child Welfare Law as amended through April 2009 is available in Japanese and English via Japanese Law Translation at <http://www.japaneselawtranslation.go.jp/law/detail/?re=02&dn=1&x=0&y=0&co=1&yo=&gn=&sy=&ht=&no=&bu=&ta=&ky=child+welfare+act&page=3>.
- 10 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para 8.
- 9 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 7, available at <http://www2.ohchr.org/english/bodies/crc/crcs54.htm>.
- 7 Reply of the Government of Japan to the list of issues relating to the second periodic report of Japan on the Convention on the Rights of the Child, para. 2(c), available at <http://www.ohchr.org/EN/HRBodies/CRC/Documents/Written%20Replies/wr-japan-2.pdf>;
CRC/C/41/Add.1, 5 August 1996, Report of State party to the Committee on the Rights of the Child, para. 314, table 28, available at <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/41/Add.1>.
- 6 The Immigration Control and Refugee Recognition Act as amended through December 2009 is available in Japanese and English via Japanese Law Translation at <http://www.japaneselawtranslation.go.jp/law/detail/?re=02&dn=1&x=49&y=16&co=1&yo=&gn=&sy=&ht=&no=&bu=&ta=&ky=immigration+control+act&page=1>.
- 8 ECPAT, Global Monitoring Report on the status of action against commercial sexual exploitation of children: Japan, 2006, p. 18, available at www.ecpat.net/A4A_2005/PDF/Asia/Global_Monitoring_Report-JAPAN.pdf.
- 11 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para 9.
- 12 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para 30.

	<p>5 years' imprisonment with labour and a fine of up to 3,000,000 yen or 1 to 10 years' imprisonment with labour and a fine of up to 10,000,000 yen if done for profit (Immigration Control and Refugee Recognition Act, Art. 74). Smuggling persons in the direction of Japan is punishable by up to 3 years' imprisonment with labour and a fine of up to 2,000,000 yen or up to 7 years' imprisonment with labour and a fine of up to 5,000,000 yen if done for profit (Immigration Control and Refugee Recognition Act, Art. 74-2). Delivering, receiving, transporting or harbouring a person who has been smuggled is punishable by up to 5 years' imprisonment with labour and a fine of up to 3,000,000 yen, or – if done for profit – by between 1 and 10 years' imprisonment with labour and a fine of up to 10,000,000 yen (Immigration Control and Refugee Recognition Act, Art. 74-4).</p> <p>Additionally, buying or selling a person to transport that person from any country to any other country is punishable by up to 2 years' imprisonment with labour, as is transporting a person who has been</p>		<p>2 and 3 of the Optional Protocol, ensure that the law is enforced in practice and that perpetrators are brought to justice in order to prevent impunity. In particular, the State party should criminalise: (a) The sale of children by offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation, transfer of organs of the child for profit, or engagement of the child in forced labour or improperly inducing consent, as an intermediary, for the adoption of a child in violation of the applicable legal instrument on adoption...”¹³</p>
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13 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para 31.

	bought or sold (Penal Code, Arts. 226-2, 226-3).		
Offering, delivering or accepting, by whatever means, a child for the purpose of:			
Sexual exploitation of the child (Art. 3.1 (a) (i) a.)	<p>Buying or selling a child for the purpose of child prostitution or pornography is punishable by 1 to 10 years' imprisonment with labour, and Japanese nationals transporting a child who has been bought or sold for the purposes of child prostitution may be sentenced to up to 2 years' imprisonment with labour (Law Banning Child Prostitution and Pornography, Art. 8).¹⁴</p> <p>Where money does not change hands, kidnapping or abducting a person “for the purposes of profit, indecency, marriage or threat” is punishable by 1 to 10 years' imprisonment with labour (Penal Code, Art. 225), and controlling a child for the purpose of having the</p>	In 2003, Article 60 of the Child Welfare Law was amended to raise the maximum punishment for controlling a child for the purposes of having the child engage in acts that are mentally or physically harmful to the child from previous levels of up to 1 year's imprisonment with labour and a fine of up to 300,000 yen. ¹⁶	<p>On the increasing incidence of sexual exploitation of children and the need to take measures to prosecute offenders and assist victims' recovery: “The Committee reiterates its concern...at the increasing instances of sexual exploitation of children, including through prostitution.”¹⁷</p> <p>“The Committee recommends that the State party strengthen efforts to investigate cases and prosecute perpetrators of child sexual exploitation and provide counselling and other recovery assistance to victims of sexual exploitation.”¹⁸</p>

¹⁴ The Law Banning Child Prostitution and Pornography as amended through April 2009 is available in Japanese and English via Japanese Law Translation at <http://www.japaneselawtranslation.go.jp/law/detail/?re=02&dn=1&x=15&y=6&co=1&yo=&gn=&sy=&ht=&no=&bu=&ta=&ky=child+prostitution+and+pornography&page=2>.

	<p>child engage in acts that are mentally or physically harmful to the child is punishable by up to 3 years' imprisonment with labour and a fine of up to 1,000,000 yen (Child Welfare Law, Arts. 34, 60).</p> <p>In addition, the sexual abuse and exploitation of children are both generally prohibited under the Child Abuse Prevention Law.¹⁵</p>		
Transfer of organs of the child for profit (Art. 3.1 (a) (i) b.)	The sale of children for the purpose of transfer of organs for profit is not specifically prohibited under Japanese law.		
Engagement of the child in forced labour (Art. 3.1 (a) (i) c.)	The sale of children for the purpose of child labour is not specifically prohibited under Japanese law. However, the Constitution of Japan states that “children shall not be exploited” in the context of labour, ¹⁹	The Law on Control and Improvement of Amusement and Entertainment Businesses was amended in 2005 to increase penalties for listed offences. ²²	

15 CRC/C/JPN/3, 25 September 2009, Report of State party to the Committee on the Rights of the Child, para. 545, available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-JPN3.doc>.

18 CRC/C/JPN/CO/3, 20 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 82.

17 CRC/C/JPN/CO/3, 20 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 81, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.JPN.CO.3.pdf>.

16 Reply of the Government of Japan to the list of issues relating to the second periodic report of Japan on the Convention on the Rights of the Child, para. 2(c); CRC/C/41/Add.1, 5 August 1996, Report of the State party to the Committee on the Rights of the Child, para. 314, table 28.

19 Constitution of Japan, Article 27. The Constitution is available in Japanese and English via Japanese Law Translation at <http://www.japaneselawtranslation.go.jp/law/detail/?id=174&vm=04&re=02&new=1>.

	<p>and some activities relating to forced child labour are offences or otherwise prohibited, as detailed below.</p> <p>The Labour Standards Law prohibits employers from forcing others to work against their will “by means of physical violence, intimidation, confinement, or any other unfair restraint on the mental or physical freedom of the workers” (Labour Standards Law, Art. 5)²⁰, and forcing a foreign national to engage in illegal work is punishable by up to 3 years' imprisonment with labour and a fine of up to 3,000,000 yen (Immigration Control and Refugee Recognition Act, Art. 73-2).</p> <p>Children under 18 are specifically prohibited from engaging in hazardous work, including work with heavy machinery, work in dangerous, unsafe, or unhealthy conditions, and mining (Labour Standards Law, Art. 62). The Law on Control and Improvement of Amusement and Entertainment Businesses also prohibits children from working in licensed</p>		
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20 The Labour Standards Law as amended through April 2009 is available in Japanese and English via Japanese Law Translation at <http://www.japaneselawtranslation.go.jp/law/detail/?re=02&dn=1&x=0&y=0&co=1&yo=&gn=&sy=&ht=&no=&bu=&ta=&ky=labor+standards&page=10>.

22 CRC/C/JPN/3, 25 September 2009, Report of State party to the Committee on the Rights of the Child, para. 517.

	<p>establishments in nighttime hours and forbids employers in sex-related industries from hiring children at all.²¹</p> <p>Although not specific to child labour, the offence of controlling a child for the purposes of having the child engage in acts that are mentally or physically harmful to the child is potentially applicable to forced labour and, as discussed above, is punishable by up to 3 years imprisonment with labour and a fine of up to 1,000,000 yen (Child Welfare Law, Arts. 34, 60).</p>		
Adoption:			
Improperly inducing consent for adoption in violation of international instruments (Art. 3.1 (a) (ii))	Improperly inducing consent for adoption in violation of international instruments is not specifically prohibited under Japanese law, and Japan has not signed the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. ²³		On the lack of oversight for international adoption: “The Committee...is...concerned at the lack of adequate oversight for intercountry adoptions, including the absence of a registry for children adopted outside the country.” ²⁴ “The Committee recommends that the State party: (a) Take and effectively implement measures to ensure that all adoptions are subject to judicial

21 CRC/C/JPN/3, 25 September 2009, Report of State party to the Committee on the Rights of the Child, para. 517; see also Labour Standards Act, Art. 61.

23 CRC/C/OPSC/JPN/1, 21 October 2009, Report of State party to the Committee on the Rights of the Child, para. 25, available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPSC.JPN.1.doc>.

24 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 54.

			authorization and are in accordance with the best interests of the child, and that a registry of all adopted children is maintained; (b) Consider ratifying the 1993 Hague Convention No. 33 on Protection of Children and Cooperation in Respect of Inter-country Adoption.” ²⁵
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Child Prostitution (“the use of a child in sexual activities for remuneration or any other form of consideration”)

MEASURE REQUIRED (PROHIBITION)	CURRENT LAW	LEGAL REFORM	COMPLIANCE
Offering, obtaining, procuring or providing a child for child prostitution (Art. 3.1 (b))	Japanese law prohibits soliciting another to become involved in child prostitution, inducing a child to perform “obscene acts”, and forcing a child to engage in customer service in a sex-related industry (Law Banning Child Prostitution and Pornography, Art. 6; Child Welfare Law, Arts. 34, 60; Law on Control and Improvement of Amusement and Entertainment Businesses, Arts. 28, 31, 50).	In 1999, Japan adopted the Law Banning Child Prostitution and Pornography to address the commercial sexual exploitation of children. In 2004, this law was amended to increase the statutory penalties for crimes related to child prostitution. ²⁶ In 2003, Article 60 of the Child Welfare Law was amended to raise the maximum fine for inducing a child to perform obscene acts from the previous level of 500,000 yen. ²⁷	On the failure to criminalise all acts related to child prostitution: “The Committee is concerned that the offences set out in the Optional Protocol are not fully covered under the State party’s penal law in accordance with articles 2 and 3 of the Optional Protocol...” ²⁹ “The Committee recommends that the State party revise and bring its Penal Code into full compliance with articles 2 and 3 of the Optional Protocol, ensure that the law is enforced in practice and that perpetrators are

²⁵ CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 55.

²⁶ CRC/C/JPN/3, 25 September 2009, Report of State party to the Committee on the Rights of the Child, para. 543.

	<p>An adult engaging a child for prostitution can be punished with up to 5 years' imprisonment with labour and a fine of up to 3,000,000 yen (Law Banning Child Prostitution and Pornography, Art. 4). Facilitating and soliciting child prostitution are punishable by imprisonment with labour for up to 5 years and a fine of up to 5,000,000 yen, and those who engage in the business of facilitating or soliciting child prostitution can be sentenced to up to 7 years' imprisonment with labour and fined up to 10,000,000 yen (Law Banning Child Prostitution and Pornography, Arts. 5, 6). On a more general level, inducing a child to perform obscene acts is punishable by up to 10 years' imprisonment with labour and a fine of up to 3,000,000 yen (Child Welfare Law, Arts. 34, 60).</p> <p>In addition, the Online Dating Site</p>	<p>The Online Dating Site Regulation Law prohibiting children's access to certain matchmaking sites was introduced and entered into force in 2003.²⁸</p>	<p>brought to justice in order to prevent impunity. In particular, the State party should criminalize... (b) Offering, obtaining, procuring or providing a child for child prostitution.”³⁰</p> <p>On the criminalisation of children involved in prostitution: “The Committee, while welcoming the measures to address various elements of the crimes set out in the Optional Protocol, is concerned that victims of child prostitution may be treated as criminals.”³¹</p> <p>On the adoption and limited coverage of the Online Dating Site Regulation Law: “The Committee notes with appreciation: (a) The enactment of the Online Dating Site Regulation Law in June 2003 to combat child sexual exploitation through internet dating sites...”³² “The Committee is concerned that,</p>
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27 Reply of the Government of Japan to the list of issues relating to the second periodic report of Japan on the Convention on the Rights of the Child, para. 2(c); CRC/C/41/Add.1, 5 August 1996, Report of State party to the Committee on the Rights of the Child, para. 314, table 28.

28 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 4; Reply of the Government of Japan to the list of issues relating to the second periodic report of Japan on the Convention on the Rights of the Child, para. 2(a).

29 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 30.

30 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 31.

31 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 34.

32 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 4.

	<p>Regulation Law prohibits children under 18 from accessing matchmaking websites designed to facilitate child prostitution, an offence punishable by a fine of up to 1,000,000 yen.</p>		<p>although the Online Dating Site Regulation Law aims to eliminate the use of online dating websites to facilitate child prostitution, other types of websites are not similarly covered by law.”³³ “The Committee recommends that the State party revise the Online Dating Site Regulation Law with a view to prohibiting the solicitation of child prostitution through all internet sites.”³⁴</p>
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Child Pornography (“any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes”)

MEASURE REQUIRED (PROHIBITION)	CURRENT LAW	LEGAL REFORM	COMPLIANCE
<p>Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography (Art. 3.1 (c))</p>	<p>Producing child pornography if it involves forcing a child to pose is punishable by up to 3 years' imprisonment with labour and a fine of up to 3,000,000 yen (Law Banning Child Prostitution and Pornography, Art. 7).</p> <p>Distributing or possessing with the</p>	<p>The 1999 Law Banning Child Prostitution and Pornography was amended in 2004 to increase the statutory penalties for crimes related to child pornography and to criminalise inducing a child to perform obscene acts for the purposes of child pornography and selling, distributing or possessing with the intent to sell or</p>	<p>On the failure to criminalise all acts related to child pornography, including possession: “In view of the fact that the possession of child pornography is necessarily a consequence of the sexual exploitation of children, the Committee expresses its concern that, although article 7, paragraph 2, of the Law Banning Child</p>

33 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 32.

34 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 33.

	<p>intent to distribute, importing or exporting child pornography into or out of Japan are punishable by up to 3 years' imprisonment with labour and a fine of up to 3,000,000 yen if it is offered to a few specific individuals (Law Banning Child Prostitution and Pornography, Art. 7). If the child pornography is displayed or distributed to the general public or possessed with the intent to distribute, however, producing, distributing, and importing or exporting into or out of Japan are punishable by up to 5 years' imprisonment with labour and a fine of up to 5,000,000 (Law Banning Child Prostitution and Pornography, Art. 7).</p> <p>Japanese nationals are also subject to the same penalties for importing or exporting child pornography into or out of a foreign country (Law Banning Child Prostitution and Pornography, Art. 7; Customs Law, Arts. 68-69; 108-109).</p> <p>In addition, businesses engaged in distributing child pornography for sale</p>	<p>distribute electro-magnetic records containing child pornography.³⁶</p>	<p>Prostitution and Pornography criminalizes the possession of child pornography 'for the purpose of offering it to a few, specific persons', the possession of child pornography remains legal."³⁷</p> <p>"The Committee strongly urges the State party to amend its legislation to include possession of child pornography as a criminal offence in line with article 3, paragraph 1(c) of the Optional Protocol."³⁸</p> <p>"The Committee is concerned that the offences set out in the Optional Protocol are not fully covered under the State party's penal law in accordance with articles 2 and 3 of the Optional Protocol..."³⁹</p> <p>"The Committee recommends that the State party revise and bring its Penal Code into full compliance with articles 2 and 3 of the Optional Protocol, ensure that the law is enforced in practice and that perpetrators are brought to justice in order to prevent impunity. In particular, the State party should criminalize...(c) Producing, distributing, disseminating, importing,</p>
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35 CRC/C/JPN/3, 25 September 2009, Report of State party to the Committee on the Rights of the Child, para. 550.

36 CRC/C/JPN/3, 25 September 2009, Report of State party to the Committee on the Rights of the Child, para. 543.

37 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 28.

38 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 29.

39 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 30.

Liability for Prosecution

MEASURE REQUIRED	CURRENT LAW	LEGAL REFORM	COMPLIANCE
<p>Attempt, complicity and participation in cited activities prohibited (Art. 3.2)</p>	<p>Attempts are not generally punishable under Japanese law, but may be specifically criminalised for certain offences (Penal Code, Art. 44). For crimes relating to the trafficking, buying and selling of children under Articles 224 to 226 of the Penal Code, Article 8 of the Law Banning Child Prostitution and Pornography, Article 74 of the Immigration Control and Refugee Recognition Act, and Article 109 of the Customs Law, attempts are punishable (Penal Code, Art. 228; Law Banning Child Prostitution and Pornography, Art. 8; Immigration Control and Refugee Recognition Act, Art. 74; Customs Law, Art. 109). Notably, however, the failure to complete the commission of an offence may in some circumstances be viewed as a mitigating factor when determining punishment (Penal Code, Art. 43).</p>		<p>On the need to criminalise all attempts of offences related to the sale of children, child prostitution, and child pornography: “The Committee recommends that the State party revise and bring its Penal Code into full compliance with articles 2 and 3 of the Optional Protocol, ensure that the law is enforced in practice and that perpetrators are brought to justice in order to prevent impunity. In particular, the State party should criminalize...(d) An attempt to commit any of these acts and complicity or participation in any of these acts...”⁴¹</p>

40 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 31.

41 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 31.

	<p>For offences under the Penal Code, participating in the commission of an offence or inducing another to commit an offence is punishable by the full force of the law (Penal Code, Arts. 60-61). Assisting in the commission of an offence is also punishable, although at a reduced level (Penal Code, Art. 62).</p>		
<p>Legal persons liable to be prosecuted (Art 3.4)</p>	<p>Where an offence is committed by a representative or employee of a legal person in the course of business, that legal person may be liable to pay a fine up to the amount stated in the provision under which the offender has been charged. Provisions for fining legal persons associated with criminal acts under the OPSC cover offences in the Law Banning Child Prostitution and Pornography (Arts. 5 - 7, related to child pornography and the intermediation/solicitation of child prostitution), the Child Welfare Law (Art. 34, related to obscene acts, causing physical or mental harm and forced labour), the Immigration Control and Refugee Recognition Act (Arts. 73-2 - 74-6, 74-6-2, 74-8, related to buying, selling, trafficking and forced labour) and the Customs Law</p>	<p>In 2005, the Law on Control and Improvement of Amusement and Entertainment Businesses was amended to make the buying and selling of persons grounds for revocation of business license.⁴³</p>	

	<p>(Law Banning Child Prostitution and Pornography, Art. 11; Child Welfare Law, Arts. 60; Immigration Control and Refugee Recognition Act, Art. 76; Customs Law, Art. 117). Legal persons and their agents violating any law also bear liability for damages in civil law (Civil Code, Art. 44).⁴²</p> <p>Administrative orders can further suspend businesses acting in violation of the Law on Control and Improvement of Amusement and Entertainment Businesses, including those involved in child pornography or the buying or selling of children (Law on Control and Improvement of Amusement and Entertainment Businesses, Art. 26).</p>		
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Additional Considerations

MEASURE	CURRENT LAW	LEGAL REFORM	COMPLIANCE
Aggravating factors	Aggravating factors include multiple and repeat offences and (Penal Code, Arts. 47-48, 57).		

⁴² The Civil Code as amended through April 2009 is available in Japanese and English via Japanese Law Translation at <http://www.japaneselawtranslation.go.jp/law/detail/?id=1928&vm=04&re=02&new=1>.

⁴³ CRC/C/JPN/3, 25 September 2009, Report of State party to the Committee on the Rights of the Child, para. 20.

Definition of child	Although the age of maturity is generally 20 years old ⁴⁴ , the Child Welfare Law and Law Banning Child Prostitution and Pornography both define a child as a person under age 18 (Child Welfare Law, Art. 4; Law Banning Child Prostitution and Pornography, Art. 2).		
Statute of limitations	The statute of limitations varies based on the severity of the punishment. For offences punishable by less than 5 years' imprisonment, the statute of limitations is 3 years; for offences punishable by 5 to 10 years' imprisonment, the statute of limitations is 5 years; for offences punishable by 10 to 15 years' imprisonment, the statute of limitations is 7 years; for offences punishable by a determinate number of years more than 15, the statute of limitations is 10 years; and for offences punishable by life imprisonment, the statute of limitations is 15 years (Code of Criminal Procedure, Art. 250). ⁴⁵	Article 250 of the Code of Criminal Procedure setting out the statute of limitations was revised in 2004. ⁴⁶	On the shortness of the periods provided for prosecuting offences under the statute of limitations: "The Committee notes with concern that, under the Code of Criminal Procedure, some of the offences covered by the Optional Protocol are subject to short periods of prescription. Given the nature of these offences, as well the reluctance of victims to report them, the Committee is concerned that the prescription periods stipulated in the Code of Criminal Procedure may lead to impunity." ⁴⁷ "The Committee urges the State party to consider the repeal of this provision or, alternatively, to consider increasing the periods of prescription with a view

44 CRC/C/JPN/3, 25 September 2009, Report of State party to the Committee on the Rights of the Child, para. 108.

45 The Code of Criminal Procedure as amended through April 2009 is available in Japanese and English via Japanese Law Translation at <http://www.japaneselawtranslation.go.jp/law/detail/?re=02&dn=1&x=0&y=0&co=1&yo=&gn=&sy=&ht=&no=&bu=&ta=&ky=code+of+criminal+procedure&page=19>

46 CRC/C/OPSC/JPN/1, 21 October 2009, Report of State party to the Committee on the Rights of the Child, para. 37.

47 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 36.

			to ensuring that all perpetrators are held accountable for acts constituting offences under the Optional Protocol.” ⁴⁸
Confiscation of proceeds	Property used, intended to be used, produced or acquired by means of criminal acts can be confiscated under the Penal Code (Penal Code, Art. 19). Proceeds from criminal activities, including those listed in the OPSC, may also be seized upon request of the police or prosecutor (Law for Punishment of Organised Crimes, Control of Crime Proceeds and Other Matters, Arts. 13 -16). ⁴⁹	Articles 13 to 16 of the Law for Punishment of Organised Crimes, Control of Crime Proceeds and Other Matters entered into force in February 2000.	
Closure of premises	Premises used in connection with the commission of offences may be subject to permanent closure, but only where they have been purchased with criminal proceeds (Law for Punishment of Organised Crimes, Control of Crime Proceeds and Other Matters, Art. 13).	As above, Article 13 of the Law for Punishment of Organised Crimes, Control of Crime Proceeds and Other Matters entered into force in February 2000.	
Protection from Deportation	Under the Immigration Control and Refugee Recognition Act, persons who	In 2005, the Immigration Control and Refugee Recognition Act was	On the amendment of the Immigration Control and Refugee Recognition Act

48 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 37.

49 An undated English translation of the Law for Punishment of Organised Crimes, Control of Crime Proceeds and Other Matters is available via the Organisation for Economic Cooperation and Development (OECD) at <http://www.oecd.org/dataoecd/16/13/46814471.pdf>.

	have been bought, sold or trafficked into Japan are not subject to deportation, even where they have engaged in prostitution and would otherwise be removed (Immigration Control and Refugee Recognition Act, Art. 24).	amended to ensure that victims of trafficking currently under the control of another person are not subject to deportation. ⁵⁰	to ensure that victims of trafficking are not subject to deportation: “The Committee notes with appreciation...(b) The amendment of the Immigration Control and Refugee Recognition Act in June 2005 to ensure that victims of trafficking are not subject to deportation” ⁵¹
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Jurisdiction

MEASURE REQUIRED	CURRENT LAW	LEGAL REFORM	COMPLIANCE
Offences committed in territory or aboard registered ship or aircraft (Art. 4.1)	Offences committed in Japanese territory or on board a ship or aircraft registered in Japan may be prosecuted in Japanese courts (Penal Code, Art. 1).		
Offender is a national or resident (Art. 4.2 (a))	Any person who commits an offence related to smuggling, buying or selling persons or transporting persons who have been smuggled, bought or sold under Articles 74-2 to 74-6 of the Immigration Control and Refugee Recognition Act or Articles 224 to 228 of the Penal Code can be tried in Japan		

⁵⁰ CRC/C/JPN/3, 25 September 2009, Report of State party to the Committee on the Rights of the Child, para. 20.

⁵¹ CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 4.

	<p>(Immigration Control and Refugee Recognition Act, Art. 74-7; Penal Code, Arts. 2 - 3-2).</p> <p>Japanese nationals may additionally be tried in Japan for committing most other offences covered by the OPSC, including under Articles 4 to 8 of the Law Banning Child Prostitution and Pornography related to importing or exporting child pornography; committing, intermediating, or soliciting child prostitution; and buying, selling or trafficking children for the purpose of prostitution, and under Article 34 of the Child Welfare Law related to delivering a child to another knowing that that person will commit an offence against the child or forcing a child to commit acts that will be mentally or physically harmful (Law Banning Child Prostitution and Pornography, Arts. 7 - 8, 10; Child Welfare Law, Art. 60; Penal Code, Arts. 3, 4-2).</p>		
<p>Victim is a national (Art. 4.2 (b))</p>	<p>Offences against Japanese nationals related to the buying, selling or trafficking of persons under Articles 224 to 228 of the Penal Code may be prosecuted in Japanese courts (Penal Code, Art. 3-2).</p>		

Offender is in territory and no provisions for extradition (Art. 4.3)	While as discussed above, some offences under the OPSC can be tried in Japan regardless of the nationality of the offender or victim, or the territory where the crime was committed, there appear to be no other provisions for trying offenders who are in Japan and cannot be extradited.		
Extradition (Art. 5)	<p>Under certain conditions, it is possible to extradite some offenders.</p> <p>Unless an extradition treaty provides otherwise, offenders are generally not extradited where:</p> <ul style="list-style-type: none"> • the offence is not punishable by death, life imprisonment, or a term of 3 or more years' imprisonment under the laws of the requesting country, • the offence was committed in Japan and would not be punishable by death, life imprisonment, or a term of 3 or more years' imprisonment under Japanese law, or • a criminal prosecution is pending against the offender for another offence in a Japanese court or when the 		

	<p>offender has been sentenced by a Japanese court (Law on Extradition, Art. 2).⁵²</p> <p>Offenders may never be extradited where:</p> <ul style="list-style-type: none"> • the offence is of a political nature, • the offence or trial occurred in Japan and the offender was not subject to prosecution or punishment under Japanese law, • there is no probable cause that the offender committed the offence, • a criminal prosecution is pending in a Japanese court or a Japanese court has reached a final judgment on the case <p>(Law on Extradition, Art. 2).</p>		
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Child-Friendly Justice

MEASURE REQUIRED	CURRENT LAW	LEGAL REFORM	COMPLIANCE
Procedures adapted to children's special needs as	<i>Investigation</i> The Code of Criminal Investigation ⁵³	The Code of Criminal Procedure and Law for the Inquest of Prosecution	On the need to ensure that child victims are not treated as offenders:

⁵² The Law on Extradition as amended through February 2010 is available in Japanese and English via Japanese Law Translation at <http://www.japaneselawtranslation.go.jp/law/detail/?re=02&dn=1&x=0&y=0&co=1&yo=&gn=&sy=&ht=&no=&bu=&ta=&ky=extradition&page=6> .

<p>witnesses (Art. 8.1 (a))</p>	<p>provides for special consideration of a victim's needs during a police investigation, and offences which harm the welfare of a child are given particular attention. When questioning any child victim, law enforcement agencies must take into account the individual child's needs in determining the nature of the interview, including the manner of questioning, the time and location of the interview, the desire to limit the number of interviews, and the gender and other potentially relevant characteristics of the interviewer.⁵⁴</p> <p>When investigating crimes related to child prostitution, child pornography, and trafficking, professionals involved must consider the child victim's rights and individual characteristics, and must also strive to protect the child's reputation and dignity (Law Banning Child Prostitution and Pornography, Art. 12). The Law Banning Child Prostitution and Pornography further requires that national and local officials endeavour to train law enforcement officials to handle these cases (Law Banning Child Prostitution</p>	<p>were amended in 2000 to introduce special accommodations for victims of sexual offences who must offer testimony, now provided for under Article 157 of the Code of Criminal Procedure.⁵⁶</p>	<p>“The Committee recommends that the State party ensure, by appropriate amendments to its legislation, that all children who are victims of violations of the Optional Protocol be treated as victims, not offenders.”⁵⁷</p> <p>On the measures taken to accommodate child witnesses and the need for additional procedural adaptations: “‘The Committee welcomes measures in place to protect the rights and interests of child victims and witnesses in criminal justice procedures, including the availability of separate interviewing rooms and the possibility to hold a hearing in closed session. Nevertheless...the Committee expresses concern at the inadequacy of formal arrangements to limit the number of times children are required to testify and that the use of video evidence, in lieu of oral testimony, is not accepted during criminal proceedings.’”⁵⁸</p> <p>“The Committee recommends that the State party: (a)...ensur[e] that children are not subjected to additional trauma as a result of being required to testify</p>
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53 The Code of Criminal Investigation is not primary legislation; it is a compilation of the Rules of the National Public Safety Commission.

54 CRC/C/OPSC/JPN/1, 21 October 2009, Report of State party to the Committee on the Rights of the Child, para. 54.

	<p>and Pornography, Art. 12).</p> <p><i>Testifying</i> Child witnesses who are unable to take or understand the meaning of an oath may still be examined in court, and their testimony cannot be viewed negatively in light of their inability to take or comprehend an oath (Code of Criminal Procedure, Art. 155).</p> <p>Child victims of sexual offences who do testify in court may, if they are likely to feel extreme anxiety or to suffer serious psychological harm, also be accompanied by a family member or psychologist, allowed to testify behind a separating screen, or given the option to testify via live video link (Code of Criminal Procedure, Arts. 157-2 to 157-4). If a child is particularly uncomfortable testifying in court, he or she may also be permitted to testify outside the courthouse (Code of Criminal Procedure, Art. 158). Where this is the case, the judge may make arrangements to minimise disruption to the child's life by, for example, picking a location convenient to the child's home and a time convenient to the child's school schedule and other</p>		<p>repeatedly and consider, to this end, the use of video evidence rather than oral testimony in such proceedings; (b) Strengthen measures, including through the amendment of the Criminal Procedure Code, to protect the rights and interests of child victims, for all children under the age of 18 years, in accordance with article 8, paragraph 1 of the Optional Protocol and the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC res. 2005/20); (c) Ensure that judges, prosecutors, police and other professionals working with child witnesses receive training on child-friendly interaction with victims and witnesses at all stages of the criminal and judicial processes.”⁵⁹</p>
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	obligations (Code of Criminal Procedure, Arts. 273, 294). ⁵⁵		
Children informed of rights/role and scope/timing/progress/disposition of cases (Art. 8.1 (b))	Children may request information on criminal proceedings under the Victim Notification System, through which the prosecutor will inform the child of the facts presented in the indictment, the progress of the proceedings (including timing and important dates), and the outcome of the case. Child victims may also receive summaries of ongoing criminal investigations and criminal proceedings directly from law-enforcement agencies (Code of Criminal Investigation, Art. 10).		
Children's views/needs/concerns presented (Art. 8.1 (c))	Child victims involved in criminal proceedings may present their views by testifying or by making a request directly or through their legal representative to make a statement. If the statement is to be made in court, the child may be questioned with the benefit of the special measures provided for under the Code of		

55 CRC/C/OPSC/JPN/1, 21 October 2009, Report of State party to the Committee on the Rights of the Child, para. 57.

58 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 38.

57 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 35.

56 CRC/C/104/Add.2, 24 July 2003, Report of State party to the Committee on the Rights of the Child, para. 495.

59 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 39.

	<p>Criminal Procedure (Code of Criminal Procedure, Arts. 157-2 to 157-4). Alternatively, the court may request that the child submit a written statement (Code of Criminal Procedure, Art. 292-2).</p>		
<p>Support services provided throughout legal process (Art. 8.1 (d))</p>	<p>Law enforcement agencies are required to notify child guidance centres, which operate under the Child Welfare Law, of child victims of prostitution and pornography who are in need of protection, support or recovery services.⁶⁰ Specialised counseling services are available for all child victims involved in criminal proceedings before and during the interview or testimony process, and counseling may be provided by trained professionals on an ongoing basis.⁶¹ Victim support services may also include guidance on certain issues, accompaniment to court, and assistance with administrative procedures.⁶²</p>		<p>On the lack of support provided to child victims throughout the legal process: “[T]he Committee is concerned that victims of crimes under the Optional Protocol who are witnesses in criminal proceedings do not receive adequate support and assistance throughout the criminal and judicial processes...”⁶³ “The Committee recommends that the State party: (a) Urgently review, in consultation with experts in the field, its procedures for the provision of support and assistance to child victims who are witnesses...”⁶⁴</p>

60 CRC/C/OPSC/JPN/1, 21 October 2009, Report of State party to the Committee on the Rights of the Child, para. 71; CRC/C/41/Add.1, 5 August 1996, Report of State party to the Committee on the Rights of the Child, para. 159.

61 CRC/C/OPSC/JPN/1, 21 October 2009, Report of State party to the Committee on the Rights of the Child, paras. 54, 70.

62 CRC/C/OPSC/JPN/1, 21 October 2009, Report of State party to the Committee on the Rights of the Child, para. 62.

63 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 38.

64 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, para. 39.

<p>Privacy/identity protected (Art. 8.1 (e))</p>	<p>In criminal proceedings involving child victims, the judge may order that the child's name, address, date of birth, and school not be disclosed in court records (Code of Criminal Procedure, Art. 295). Where the child is a victim of pornography, prostitution, or any other offence listed under the Law Banning Child Prostitution and Pornography, it is further illegal to publish an article or report containing information which would allow the general public to identify the child (Law Banning Child Prostitution and Pornography, Art. 13).</p>		
<p>Providing for safety of victims/families involved (Art. 8.1 (f)/ Art. 8.5)</p>	<p>Intimidating a witness is punishable by up to 1 year's imprisonment or a fine up to 200,000 yen (Penal Code, Art. 105-2). If there is a risk that a victim testifying in a criminal proceeding might be harmed, the prosecutor or defence counsel may also request that the opposing party not disclose contact or other details to certain persons (Code of Criminal Procedure, Art. 299-2).</p> <p>Under the Code of Criminal Investigation, law-enforcement agencies may also keep confidential the contact or other identifying details</p>		

	of a victim who risks being harmed and, if necessary, offer further protective measures. ⁶⁵		
Avoid delay in disposition/compensation (Art. 8.1 (g))	There appear to be no provisions in Japanese law regarding the avoidance of delay in reaching dispositions or providing compensation in cases regarding child victims.		
Best interests a primary consideration (Art. 8.3)	<p>While the term “best interests” is not used in Japanese legislation, there are provisions that require children's welfare, rights, and individual characteristics be considered in criminal enforcement and investigations.</p> <p>The Child Welfare Law requires that all citizens “endeavour to ensure that children are born and brought up in good mental and physical health” and makes national and local governments specifically responsible for this task, further clarifying that “children's welfare...shall be consistently respected in enforcing all laws and regulations on children” (Child Welfare Law, Arts. 1-3).</p>		

⁶⁵ CRC/C/OPSC/JPN/1, 21 October 2009, Report of State party to the Committee on the Rights of the Child, para. 66.

	<p>The Law Banning Child Prostitution and Pornography also requires that children's rights and characteristics be taken into consideration as part of any investigation or prosecution for child prostitution or child pornography (Law Banning Child Prostitution and Pornography, Art. 12).</p>		
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Remedial Measures

MEASURE REQUIRED	CURRENT LAW	LEGAL REFORM	COMPLIANCE
<p>Assistance given to facilitate victims' recovery (Art. 9.3)</p>	<p>Where a child has been prostituted or used in the making of pornography, child welfare agencies work to investigate the circumstances of the case and consider protective measures including counseling, temporary guardianship, and placement in an institution (Law Banning Child Prostitution and Pornography, Art. 15). Child victims of other offences may also seek help in child guidance centres, which are able to provide counseling services and individualised mental health care.⁶⁶</p> <p>Personnel in child guidance centres and child welfare facilities receive</p>	<p>The Child Welfare Law was amended in 2004 to prioritise child guidance centres' handling of difficult cases and to improve local child guidance systems. A complaints procedure for children in institutions was also introduced in 2000, and child rights advocacy has been recently incorporated into the child welfare training curriculum.⁶⁸</p>	<p>On the inadequacy of measures taken to facilitate child victims' recovery: “The Committee notes that, despite the measures taken by the State party in this regard, such as the provision of counselling services, physical and psychosocial recovery and social reintegration measures for victims of offences under the Optional Protocol remain inadequate.”</p> <p>“The Committee recommends that the State party ensure that resources be earmarked in order to strengthen physical and psychosocial recovery and social reintegration measures, in accordance with article 9, paragraph 3, of the Optional Protocol, in particular</p>

⁶⁶ CRC/C/OPSC/JPN/1, 21 October 2009, Report of State party to the Committee on the Rights of the Child, para. 69.

	special training on how to deal with child victims ⁶⁷ , and national and local governments have a duty to promote research studies on child victimisation, to educate professionals who work with child victims, and to reinforce the networks of public and private organisations that assist child victims. (Law Banning Child Prostitution and Pornography, Art. 16).		by providing interdisciplinary assistance for child victims and through collaboration and bilateral agreements with victims' countries of origin, where appropriate." ⁶⁹
Child victims have access to procedures to seek compensation from offenders (Art. 9.4)	Child victims have the right to seek compensation from offenders and legal persons by filing civil lawsuits (Civil Code, Arts. 44, 709). However, persons under 20 years of age do not generally have the capacity to file civil lawsuits directly and must act through a legal representative (Code of Civil Procedure, Art. 31). ⁷⁰		

Further Resources

67 CRC/C/OPSC/JPN/1, 21 October 2009, Report of State party to the Committee on the Rights of the Child, para. 14.

68 CRC/C/JPN/3, 25 September 2009, Report of State party to the Committee on the Rights of the Child, para. 46.

69 CRC/C/OPSC/JPN/CO/1, 22 June 2010, Concluding Observations of the Committee on the Rights of the Child, paras. 40 – 41.

70 The Code of Civil Procedure as amended through April 2009 is available in Japanese and English via Japanese Law Translation at <http://www.japaneselawtranslation.go.jp/law/detail/?id=1940&vm=04&re=02&new=1>.

ECPAT, Global Monitoring Report on the status of action against commercial sexual exploitation of children: Japan, 2nd Edition, 2011, available at http://www.ecpat.net/A4A_2005/PDF/EAP/A4A2011_EAP_Japan_FINAL.pdf.

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